

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Pickens County
Robin B. Stilwell, Circuit Court Judge
2012-CP-39-00177

Appellate Case No. 2014-001608

John Forrest Ham, Jr., #240615,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

SUPPLEMENTAL APPENDIX

TIFFANY L. BUTLER
Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

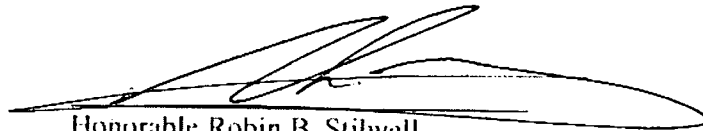
ATTORNEYS FOR RESPONDENT

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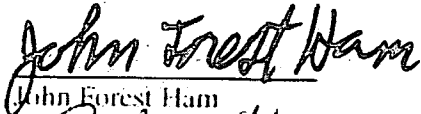
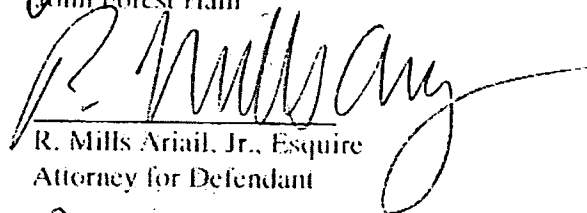
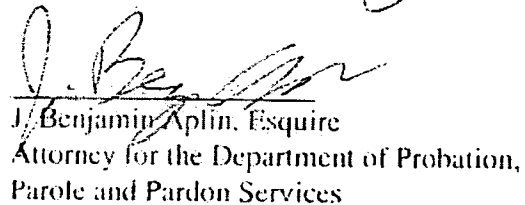
sentenced in Federal Court, he will again be found to have violated the conditions of his probation and will have the same probation revocation sentence re-imposed. Further, no hearing or appearance will be required for this Court to re-impose the Defendant's previous probation revocation sentence.

Based upon the agreement of the parties, I order that Defendant's probation revocation sentence be vacated at this time, and that the South Carolina Department of Corrections return him to the Greenville County Detention Center to be held pursuant to the original probation arrest warrant.



Honorable Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

We Consent:


John Forest Ham
R. Mills Ariail, Jr., Esquire
Attorney for Defendant
J. Benjamin Aplin, Esquire
Attorney for the Department of Probation,
Parole and Pardon Services

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF
GENERAL SESSIONS FOR
THE THIRTEENTH JUDICIAL CIRCUIT

FILED

APR 09 2010

STATE OF SOUTH CAROLINA)
)
-VERSUS-)
)
JOHN HAM,)
)
DEFENDANT.)
_____)

CASE NO.: 2008-GS-47-11
Counts 3, 13, 14, 15, 16 and 17

JAMES R. PARKS
CLERK, STATE GRAND JURY

PLEA AGREEMENT

AGREEMENT made this 24th day of March, 2010, between and among the State of South Carolina, as represented by Attorney General Henry McMaster, Susan O. Porter, Chief of Prosecution and Assistant Attorney General John K. Crout and the Defendant, and his attorney, Mills Ariail, Esquire.

1. The Defendant, John Ham, agrees to plead guilty to the offense of Trafficking Methamphetamine 28-100 grams (Conspiracy), first offense, a violation of S.C. Code Ann. §44-53-375(C)(2)(a), a lesser-included of that alleged in Superseding Indictment Number 2008-GS-47-11 Count 3, which carries a sentence range from seven (7) years to thirty (30) years, and a fine of \$50,000.00 dollars. The State will recommend a sentence of fifteen (15) years to run concurrent with his other charges. This is considered a violent and serious offense.

2. The Defendant, John Ham, agrees to plead guilty to the offense of Distribution of Methamphetamine, first offense, a violation of S.C. Code Ann. §44-53-375(B)(1), as alleged in Superseding Indictment Number 2008-GS-47-11 Count 13, which carries a sentence range up to thirty ¹⁵~~(30)~~ years and a fine of \$50,000.00 dollars. The State will recommend a sentence of fifteen (15) years to run concurrent with his other charges. This is considered a violent and serious

offense.

3. The Defendant, John Ham, agrees to plead guilty to the offense of Trafficking in Methamphetamine 28-100 grams, first offense, a violation of S.C. Code Ann. §44-53-375(C)(2)(a), a lesser-included of that alleged in Superseding Indictment Number 2008-GS-47-11 Count 14, which carries a sentence range from seven (7) years to thirty (30) years and a fine of \$50,000.00 dollars. The State will recommend a sentence of fifteen (15) years to run concurrent with his other charges. This is considered a violent and serious offense.

4. The Defendant, John Ham, agrees to plead guilty to the offense of Simple Possession of Marijuana, first offense, a violation of S.C. Code Ann. §44-53-370(d)(2), as alleged in Superseding Indictment Number 2008-GS-47-11 Count 15, which carries a sentence range up to ^{6 months} ~~five (5) years~~ and a fine of \$5,000.00 dollars. The State will recommend a sentence ~~of five (5) years to run concurrent with his other charges.~~ ^{Time Served} This is considered a violent and ^{serious} ~~serious~~ offense.

5. The Defendant, John Ham, agrees to plead guilty to the offense of Trafficking in Methamphetamine 28-100 grams, first offense, a violation of S.C. Code Ann. §44-53-375(C)(2)(a), as alleged in Superseding Indictment Number 2008-GS-47-11 Count 16, which carries a sentence range from seven (7) years to thirty (30) years and a fine of \$50,000.00 dollars. The State will recommend a sentence of fifteen (15) years to run concurrent with his other charges. This is considered a violent and serious offense.

6. The Defendant, John Ham, agrees to plead guilty to the offense of Trafficking Cocaine 10-28 grams, first offense, a violation of S.C. Code Ann. §44-53-370(e)(2)(a)(1), as alleged in Superseding Indictment Number 2008-GS-47-11 Count 17, which carries a sentence

range from three (3) years to ten (10) years and a fine of \$25,000.00 dollars. The State will recommend a sentence of ten (10) years to run concurrent with his other charges. This is considered a violent and serious offense.

7. The Defendant, John Ham, agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of the importation, possession, and distribution of controlled substances and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning unlawful drug activities and related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be truthful or to cooperate at any stage can cause the obligations of the State of South Carolina under this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of guilty to the offense described above; (2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant for all charges; and, (5) the State may advise the Department of

Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial level.

8. The Defendant, John Ham, understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended

for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

9. The Defendant, John Ham, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should she be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

10. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

11. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

12. The Defendant, John Ham, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, John Ham, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, John Ham, understands that he has a right to file a post conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post conviction relief action.

13. The Defendant, John Ham, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

14. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.

4-9-10
DATE

John Ham
John Ham
Defendant

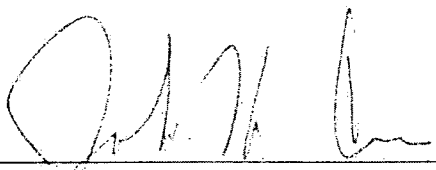
4/9/10
DATE

Mills Ariail
Mills Ariail, Esquire
Attorney for Defendant

Henry McMaster
Attorney General of South Carolina

Susan O. Porter
Chief of Prosecution

4-9-10
DATE

By: 
John K. Crout
Assistant Attorney General
State Grand Jury

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA)

vs.)

JOHN FORREST HAM, JR.)

CR. NO. 6:10-46

18 U.S.C. § 922(g)(1)

18 U.S.C. § 924(a)(2)

18 U.S.C. § 924(e)

18 U.S.C. § 924(c)(1)

18 U.S.C. § 2119(1)

INDICTMENT

COUNT 1

THE GRAND JURY CHARGES:

That on or about September 17, 2009, in the District of South Carolina, the Defendant, JOHN FORREST HAM, JR., having been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess in and affecting commerce, a firearm and ammunition, that is, a Heckler & Koch, .40 caliber pistol, and .40 caliber ammunition, all of which had been shipped and transported in interstate and foreign commerce;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

U.S. DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE
2009 JAN 12 PM 3:46

COUNT 2

THE GRAND JURY FURTHER CHARGES:

That on or about September 17, 2009, in the District of South Carolina, the Defendant, JOHN FORREST HAM, JR., with the intent to cause death and serious bodily harm, did take from the person and presence of another, to wit, R P, by force, violence and intimidation, a motor vehicle that had been transported, shipped, and received in interstate commerce, that is, a 2007 Ford bus; tag number RG1088;

In violation of Title 18, United States Code, Section 2119(1).

COUNT 3

THE GRAND JURY FURTHER CHARGES:

That on or about September 17, 2009, in the District of South Carolina, the Defendant, JOHN FORREST HAM, JR., knowingly possessed a firearm during and in relation to, and did possess a firearm in furtherance of, a crime of violence, which is prosecutable in a court of the United States;

In violation of Title 18, United States Code, Section 924(c)(1).

A TRUE Bill

FOREPERSON

KEVIN F. MCDONALD (MBC/jw)
ACTING UNITED STATES ATTORNEY

RECORD OF GRAND JURY BALLOT

C/ 6:10-46

THE UNITED STATES V. JOHN FORREST HAM, JR.

(SEALED UNTIL FURTHER ORDER OF THE COURT)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA)

CR. NO. 6:10-46

v.)

JOHN FORREST HAM, JR.)

ORDER FOR
BENCH WARRANT

The Clerk of Court is hereby directed to issue a warrant for the above-named defendant, as requested by the United States Attorney. Amount and conditions of bond to be set by the United States Magistrate Judge before whom the defendant initially appears.

s/ William M. Catoe

UNITED STATES MAGISTRATE JUDGE

Greenville, South Carolina

January 1/12, 2010

I SO MOVE:

KEVIN F. MCDONALD
ACTING UNITED STATES ATTORNEY

By: Max B. Cauthen, III

Max B. Cauthen, III
Assistant U.S. Attorney
D.C. Bar No. 6732

UNITED STATES DISTRICT COURT
for the
SOUTH CAROLINA

United States of America

v.

John Forrest Ham Jr.

Defendant

Case No. 6:10-46

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate any federal, state or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if the collection is authorized by 42 U.S.C. § 14135a.
- (3) The defendant must immediately advise the court, defense counsel, and the U.S. attorney in writing before any change in address or telephone number.
- (4) The defendant must appear in court as required and must surrender to serve any sentence imposed

The defendant must appear at (if blank, to be notified) _____

Place

on _____

Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released on condition that:

- (☒) (5) The defendant promises to appear in court as required and surrender to serve any sentence imposed.
- (☐) (6) The defendant executes an unsecured bond binding the defendant to pay to the United States the sum of _____ dollars (\$ _____) in the event of a failure to appear as required or surrender to serve any sentence imposed.

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

ADDITIONAL CONDITIONS OF RELEASE

Upon finding that release by one of the above methods will not by itself reasonably assure the defendant's appearance and the safety of other persons or the community, IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

() (7) The defendant is placed in the custody of:

Person or organization _____

Address (only if above is an organization) _____

City and state _____

Tel. No. (only if above is an organization) _____

who agrees (a) to supervise the defendant in accordance with all of the conditions of release, (b) to use every effort to assure the defendant's appearance at all scheduled court proceedings, and (c) to notify the court immediately if the defendant violates any condition of release or disappears.

Signed: _____

Custodian or Proxy

Date _____

(✓) (8) The defendant must:

(✓) (a) report to the PROBATION

telephone number (864) 239-6100, no later than RELEASE

() (b) execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property:

() (c) post with the court the following proof of ownership of the designated property, or the following amount or percentage of the above-described sum

(✓) (d) execute a bail bond with solvent sureties in the amount of \$ 75,000 secured

(✓) (e) maintain or actively seek employment.

() (f) maintain or commence an education program.

() (g) surrender any passport to: _____

() (h) obtain no passport.

(✓) (i) abide by the following restrictions on personal association, place of abode, or travel: NOT TO LEAVE THE STATE OF SOUTH CAROLINA

EXCEPT WITH PERMISSION OF PRETRIAL/PROBATION OFFICER

() (j) avoid all contact, directly or indirectly, with any person who is or may become a victim or potential witness in the investigation or prosecution, including but not limited to: _____

() (k) undergo medical or psychiatric treatment: _____

() (l) return to custody each (week) day at _____ o'clock after being released each (week) day at _____ o'clock for employment, schooling, or the following purpose(s): _____

() (m) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.

(✓) (n) refrain from possessing a firearm, destructive device, or other dangerous weapons.

() (o) refrain from () any () excessive use of alcohol.

() (p) refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

(✓) (q) submit to any testing required by the pretrial services office or the supervising officer to determine whether the defendant is using a prohibited substance. Any testing may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or monitoring which is (are) required as a condition of release.

() (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if the pretrial services office or supervising officer considers it advisable.

() (s) participate in one of the following location monitoring program components and abide by its requirements as the pretrial services officer or supervising officer instructs.

() (i) Curfew. You are restricted to your residence every day () from _____ to _____, or () as directed by the pretrial services office or supervising officer; or

() (ii) Home Detention. You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities pre-approved by the pretrial services office or supervising officer; or

() (iii) Home Incarceration. You are restricted to 24-hour-a-day lock-down except for medical necessities and court appearances or other activities specifically approved by the court.

() (t) submit to the location monitoring indicated below and abide by all of the program requirements and instructions provided by the pretrial services officer or supervising officer related to the proper operation of the technology.

() The defendant must pay all or part of the cost of the program based upon your ability to pay as the pretrial services office or supervising officer determines.

() (i) Location monitoring technology as directed by the pretrial services office or supervising officer;

() (ii) Radio Frequency (RF) monitoring;

() (iii) Passive Global Positioning Satellite (GPS) monitoring;

() (iv) Active Global Positioning Satellite (GPS) monitoring (including "hybrid" (Active/Passive) GPS);

() (v) Voice Recognition monitoring.

(✓) (u) REMAIN UNDER SUPERVISION OF US PROBATION OFFICE FOR THE DURATION OF THE BOND AND FOLLOW ANY AND ALL INSTRUCTIONS GIVEN TO HIM BY THE OFFICER 2 STAY IN TOUCH WITH ATTORNEY

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

ADVICE OF PENALTIES AND SANCTIONS

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (*i.e.*, in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of the Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.



Defendant's Signature

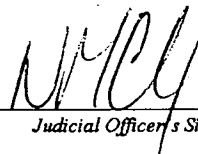
GREENVILLE, SC

City and State

Directions to the United States Marshal

- () The defendant is ORDERED released after processing.
- (X) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date: 3/16/10



Judicial Officer's Signature

US MAGISTRATE JUDGE

Printed name and title

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA

VS

CR NO. 6:10-46

JOHN FORREST HAM, JR.

PLEA

The defendant, JOHN FORREST HAM, JR., having withdrawn his plea of Not Guilty,
pleads **GUILTY** to Count **1, 2 and 3** of the **Indictment**.

John Ham
(Signed) Defendant

Spartanburg, South Carolina

5/12/10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE, ANDERSON/GREENWOOD DIVISIONS

UNITED STATES OF AMERICA	)	
	)	
-versus-	)	
	)	
BRAD VENSON WILSON	)	8:09-1209-1
ERIC CHARLES RAMSEY	)	6:09-1336-2
MARCUS ROBINSON	)	6:09-1337-1
JOHN FORREST HAM, JR.	)	6:10-46-1
KEVIN CORTEZ HOLBROOKS	)	8:10-125-1
	)	
Defendants	)	05/12/2010
	)	
	)	Spartanburg, SC
	)	

CHANGE OF PLEA

BEFORE THE HONORABLE HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

For the Government:

LEESA WASHINGTON, AUSA
ANDREW B. MOORMAN, AUSA
MAXWELL B. CAUTHEN, III, AUSA
WILLIAM J. WATKINS, JR., AUSA
U.S. Attorney's Office
105 N. Spring Street
Greenville, SC 29601

For Defts. Wilson
and Ramsey:

LORA E. COLLINS, AFPD
Federal Public Defender's Office
Two Liberty Square
Greenville, SC 29601

1 For Defts. Robinson
and Ham:

DAVID W. PLOWDEN, AFPD
Federal Public Defender's Office
Two Liberty Square
Greenville, SC 29601

4 For Deft. Holbrooks:

GORDON DAVID SEAY, JR.
David Seay Jr. Law Office
PO Box 8699
Greenville, SC 29604

7 Court Reporter:

Jean L. Cole, RMR
U.S. District Court Reporter
PO Box 10732
Greenville, SC 29603

9
10 The proceedings were taken by mechanical stenography and the
transcript produced by computer.

1 THE COURT: All right. Mr. Brad Venson Wilson --

2 THE DEFENDANT WILSON: Yes, sir.

3 THE COURT: -- represented by Ms. Collins?

4 THE DEFENDANT WILSON: Yes, sir.

5 THE COURT: And Eric Charles Ramsey also represented
6 by Ms. Collins?

7 THE DEFENDANT RAMSEY: Yes, sir.

8 THE COURT: Marcus Robinson by Mr. Plowden?

9 THE DEFENDANT ROBINSON: Yes, sir.

10 THE COURT: And John Forrest Ham, Jr., by Mr.
11 Plowden; is that correct?

12 MR. PLOWDEN: Your Honor, if I may, I'm standing in
13 for Mr. Loggins. I have discussed these cases with Mr.
14 Loggins.

15 THE COURT: All right.

16 MR. PLOWDEN: He has assisted both clients. He
17 informs me that they have consented for me to be here for the
18 plea only.

19 THE COURT: All right. You're represented by Mr.
20 Loggins and he's given you the repre -- the advice and you're
21 comfortable with Mr. Plowden following through?

22 THE DEFENDANT HAM: Yes, sir.

23 THE DEFENDANT ROBINSON: Yes, sir.

24 THE DEFENDANT HAM: Yes, sir.

25 THE COURT: Okay. All right. And then Kevin

1 Holbrooks. Mr. Holbrooks, you're represented by Mr. Seay?

2 THE DEFENDANT HOLBROOKS: Yes, sir.

3 THE COURT: All right. Let's see. Gentlemen, I
4 understand you wish to change your plea from not guilty to
5 guilty. If that be the case, please raise your right hand and
6 be sworn by the clerk.

7 (All defendants duly sworn.)

8 THE COURT: All right. Gentlemen, I'll be asking you
9 a series of questions to determine whether you're entering this
10 plea freely, voluntarily, knowingly and intelligently. If you
11 don't understand any of the questions, please stop and ask your
12 lawyer for an explanation or ask me and I'll be glad to do
13 that.

14 Do you understand that, Mr. Wilson?

15 THE DEFENDANT WILSON: Yes, sir.

16 THE COURT: Mr. Ramsey?

17 THE DEFENDANT RAMSEY: Yes, sir.

18 THE COURT: Mr. Robinson?

19 THE DEFENDANT ROBINSON: Yes, sir.

20 THE COURT: Mr. Ham?

21 THE DEFENDANT HAM: Yes, sir.

22 THE COURT: And Mr. Holbrooks?

23 THE DEFENDANT HOLBROOKS: Yes, sir.

24 THE COURT: And be sure you answer loudly enough so
25 that Ms. Cole can hear your oral answer and please answer the

1 questions as they truthfully relate to you and not just because
2 your neighbor answered the question one way or the other.

3 Do you understand that you're now under oath and that
4 if you answer any of my questions falsely your answers may
5 later be used against you in another prosecution for perjury or
6 making a false statement?

7 Mr. Wilson, do you understand that?

8 THE DEFENDANT WILSON: Yes, sir.

9 THE COURT: Mr. Ramsey?

10 THE DEFENDANT RAMSEY: Yes, sir.

11 THE COURT: Mr. Robinson?

12 THE DEFENDANT ROBINSON: Yes, sir.

13 THE COURT: Mr. Ham?

14 THE DEFENDANT HAM: Yes, sir.

15 THE COURT: And Mr. Holbrooks?

16 THE DEFENDANT HOLBROOKS: Yes, sir.

17 THE COURT: How old are each of you, Mr. Wilson?

18 THE DEFENDANT WILSON: Twenty-five.

19 THE COURT: And you, Mr. Ramsey?

20 THE DEFENDANT RAMSEY: Twenty-three.

21 THE COURT: Mr. Robinson?

22 THE DEFENDANT ROBINSON: Twenty-five.

23 THE COURT: Mr. Ham?

24 THE DEFENDANT HAM: Forty-two.

25 THE COURT: And Mr. Holbrooks?

1 THE DEFENDANT HOLBROOKS: Twenty-two.

2 COURT REPORTER: I'm sorry?

3 THE DEFENDANT HOLBROOKS: Twenty-two.

4 THE COURT: How far did each of you go in school?
5 Mr. Wilson?

6 THE DEFENDANT WILSON: I graduated high school.

7 THE COURT: Mr. Ramsey?

8 THE DEFENDANT RAMSEY: Tenth grade.

9 THE COURT: Mr. Robinson?

10 THE DEFENDANT ROBINSON: Eleventh, but I have my GED.

11 THE COURT: Mr. Ham?

12 THE DEFENDANT HAM: I graduated.

13 THE COURT: Mr. Holbrooks?

14 THE DEFENDANT HOLBROOKS: High school.

15 THE COURT: Then I can assume from your answers that
16 each of you are able to read, write, speak and understand the
17 English language?

18 Mr. Wilson?

19 THE DEFENDANT WILSON: Yes, sir.

20 THE COURT: Mr. Ramsey?

21 THE DEFENDANT RAMSEY: Yes, sir.

22 THE COURT: Mr. Robinson?

23 THE DEFENDANT ROBINSON: Yes, sir.

24 THE COURT: Mr. Ham?

25 THE DEFENDANT HAM: Yes, sir.

1 THE COURT: And Mr. Holbrooks?

2 THE DEFENDANT HOLBROOKS: Yes, sir.

3 THE COURT: Now, within the last 24 hours have you
4 taken any medication, drugs or alcohol, Mr. Wilson?

5 THE DEFENDANT WILSON: I took Ibuprofen.

6 THE COURT: Okay. That doesn't hurt you.

7 Mr. Ramsey?

8 THE DEFENDANT RAMSEY: No, sir.

9 THE COURT: Mr. Robinson?

10 THE DEFENDANT ROBINSON: No, sir.

11 THE COURT: Mr. Ham?

12 THE DEFENDANT HAM: No, sir.

13 THE COURT: And Mr. Holbrooks?

14 THE DEFENDANT HOLBROOKS: No, sir.

15 THE COURT: And have you ever been treated for abuse
16 of alcohol, drugs or mental illness, Mr. Wilson?

17 THE DEFENDANT WILSON: No, sir.

18 THE COURT: Mr. Ramsey?

19 THE DEFENDANT RAMSEY: No, sir.

20 THE COURT: Mr. Robinson?

21 THE DEFENDANT ROBINSON: No, sir.

22 THE COURT: Mr. Ham?

23 THE DEFENDANT HAM: Yes, sir.

24 THE COURT: And what for?

25 THE DEFENDANT HAM: Cocaine and pills and stuff about

1 15 years ago.

2 THE COURT: Okay. And Mr. Holbrooks?

3 THE DEFENDANT HOLBROOKS: No, sir.

4 THE COURT: Any issue as to competency from the
5 government?

6 MR. CAUTHEN: No, sir, your Honor.

7 THE COURT: Any -- any defense lawyer has any issue
8 about competency? I'll take silence that you don't. (No
9 response.)

10 Then I find that each defendant appears to be
11 competent for purposes of entering their plea here today.

12 Now, with regard to your lawyer have each of you had
13 an ample opportunity to discuss your case with your respective
14 attorney?

15 Mr. Wilson?

16 THE DEFENDANT WILSON: Yes, sir.

17 THE COURT: Mr. Ramsey?

18 THE DEFENDANT RAMSEY: Yes, sir.

19 THE COURT: Mr. Robinson?

20 THE DEFENDANT ROBINSON: Yes, sir.

21 THE COURT: Mr. Ham?

22 THE DEFENDANT HAM: Yes, sir.

23 THE COURT: And Mr. Holbrooks?

24 THE DEFENDANT HOLBROOKS: Yes, sir.

25 THE COURT: And are each of you satisfied with your

1 respective attorney's advice and representation?

2 Mr. Wilson?

3 THE DEFENDANT WILSON: Yes, sir.

4 THE COURT: Mr. Ramsey?

5 THE DEFENDANT RAMSEY: Yes, sir.

6 THE COURT: Mr. Robinson?

7 THE DEFENDANT ROBINSON: Yes, sir.

8 THE COURT: Mr. Ham?

9 THE DEFENDANT HAM: Yes, sir.

10 THE COURT: And Mr. Holbrooks?

11 THE DEFENDANT HOLBROOKS: Yes, sir.

12 THE COURT: Have each of you told your respective
13 attorney everything that you know about your case, Mr. Wilson?

14 THE DEFENDANT WILSON: Yes, sir.

15 THE COURT: Mr. Ramsey?

16 THE DEFENDANT RAMSEY: Yes, sir.

17 THE COURT: Mr. Robinson?

18 THE DEFENDANT ROBINSON: Yes, sir.

19 THE COURT: Mr. Ham?

20 THE DEFENDANT HAM: Yes, sir.

21 THE COURT: And Mr. Holbrooks?

22 THE DEFENDANT HOLBROOKS: Yes, sir.

23 THE COURT: And has your respective attorney done
24 everything that you have asked him or her to do?

25 Mr. Wilson?

1 THE DEFENDANT WILSON: Yes, sir.

2 THE COURT: Mr. Ramsey?

3 THE DEFENDANT RAMSEY: Yes, sir.

4 THE COURT: Mr. Robinson?

5 THE DEFENDANT ROBINSON: Yes, sir.

6 THE COURT: Mr. Ham?

7 THE DEFENDANT HAM: Yes, sir.

8 THE COURT: And Mr. Holbrooks?

9 THE DEFENDANT HOLBROOKS: Yes, sir.

10 THE COURT: Is there anything else that you would
11 like for your attorney to do before we proceed further?

12 Mr. Wilson?

13 THE DEFENDANT WILSON: No, sir.

14 THE COURT: Mr. Ramsey?

15 THE DEFENDANT RAMSEY: No, sir.

16 THE COURT: Mr. Robinson?

17 THE DEFENDANT ROBINSON: No, sir.

18 THE COURT: Mr. Ham?

19 THE DEFENDANT HAM: No, sir.

20 THE COURT: And Mr. Holbrooks?

21 THE DEFENDANT HOLBROOKS: No, sir.

22 THE COURT: Do each of you understand that under the
23 constitution and the laws of the United States that you're
24 entitled to a trial by jury on the charge or charges contained
25 in the indictment against you?

1 Mr. Wilson, do you understand?

2 THE DEFENDANT WILSON: Yes, sir.

3 THE COURT: Mr. Ramsey?

4 THE DEFENDANT RAMSEY: Yes, sir.

5 THE COURT: Mr. Robinson?

6 THE DEFENDANT ROBINSON: Yes, sir.

7 THE COURT: Mr. Ham?

8 THE DEFENDANT HAM: Yes, sir.

9 THE COURT: And Mr. Holbrooks?

10 THE DEFENDANT HOLBROOKS: Yes, sir.

11 THE COURT: And do each of you understand you have a
12 right to plead not guilty and to persist in that plea up -- all
13 the way up to and including a jury trial?

14 Mr. Wilson?

15 THE DEFENDANT WILSON: Yes, sir.

16 THE COURT: Mr. Ramsey?

17 THE DEFENDANT RAMSEY: Yes, sir.

18 THE COURT: Mr. Robinson?

19 THE DEFENDANT ROBINSON: Yes, sir.

20 THE COURT: Mr. Ham?

21 THE DEFENDANT HAM: Yes, sir.

22 THE COURT: And Mr. Holbrooks?

23 THE DEFENDANT HOLBROOKS: Yes, sir.

24 THE COURT: Now, had you decided to plead not guilty
25 and wanted a jury trial there would have been a number of

1 rights that attach to that proceeding. I want to make sure you
2 understand what you're giving up by waiving your right to a
3 jury trial and also by waiving your right to a jury trial.

4 At trial you would have the right to the assistance
5 of your lawyer in your defense. You would be presumed innocent
6 of the charge or charges against you and the government would
7 be required to come into court and prove you guilty by
8 competent evidence beyond a reasonable doubt before you could
9 be found guilty and you would not have to prove that you were
10 innocent.

11 At trial, Mr. Wilson, do you understand you have
12 those two rights?

13 THE DEFENDANT WILSON: Yes, sir.

14 THE COURT: Mr. Ramsey?

15 THE DEFENDANT RAMSEY: Yes, sir.

16 THE COURT: Mr. Robinson?

17 THE DEFENDANT ROBINSON: Yes, sir.

18 THE COURT: Mr. Ham?

19 THE DEFENDANT HAM: Yes, sir.

20 THE COURT: And Mr. Holbrooks?

21 THE DEFENDANT HOLBROOKS: Yes, sir.

22 THE COURT: With regard to witnesses at trial the
23 witnesses for the government would have to come into court and
24 testify in front of you and your attorney could cross-examine
25 those witnesses, object to the evidence offered by the

1 government and offer evidence on your own behalf. And had you
2 had witnesses that you wanted to come to court and testify you
3 could require them to come to court by way of the issuance of a
4 subpoena.

5 At trial, Mr. Wilson, do you understand you have
6 those two rights?

7 THE DEFENDANT WILSON: Yes, sir.

8 THE COURT: Mr. Ramsey?

9 THE DEFENDANT RAMSEY: Yes, sir.

10 THE COURT: Mr. Robinson?

11 THE DEFENDANT ROBINSON: Yes, sir.

12 THE COURT: Mr. Ham?

13 THE DEFENDANT HAM: Yes, sir.

14 THE COURT: And Mr. Holbrooks?

15 THE DEFENDANT HOLBROOKS: Yes, sir.

16 THE COURT: And finally, while you would have had a
17 right to testify at trial if you chose to do so, you would've
18 equally had a right not to testify and if that event had
19 occurred I would have told the jury that no inference or
20 suggestion of guilt could be drawn from the fact that you did
21 not testify.

22 At trial, Mr. Wilson, do you understand you have that
23 right?

24 THE DEFENDANT WILSON: Yes, sir.

25 THE COURT: Mr. Ramsey?

1 THE DEFENDANT RAMSEY: Yes, sir.

2 THE COURT: Mr. Robinson?

3 THE DEFENDANT ROBINSON: Yes, sir.

4 THE COURT: Mr. Ham?

5 THE DEFENDANT HAM: Yes, sir.

6 THE COURT: And Mr. Holbrooks?

7 THE DEFENDANT HOLBROOKS: Yes, sir.

8 THE COURT: Now, do you understand that if your plea
9 is accepted here today you will forever waive your right to a
10 jury trial and all the other rights that I've just listed for
11 you and that I'll enter a judgment of guilty and sentence you
12 on the basis of your guilty plea after considering a
13 presentence report?

14 Mr. Wilson, do you realize that?

15 THE DEFENDANT WILSON: Yes, sir.

16 THE COURT: Mr. Ramsey?

17 THE DEFENDANT RAMSEY: Yes, sir.

18 THE COURT: Mr. Robinson?

19 THE DEFENDANT ROBINSON: Yes, sir.

20 THE COURT: Mr. Ham?

21 THE DEFENDANT HAM: Yes, sir.

22 THE COURT: And Mr. Holbrooks?

23 THE DEFENDANT HOLBROOKS: Yes, sir.

24 THE COURT: And to be perfectly clear, do you want a
25 jury trial, Mr. Wilson?

1 THE DEFENDANT WILSON: I don't want a jury trial.

2 THE COURT: All right. Mr. Ramsey?

3 THE DEFENDANT RAMSEY: No, sir.

4 THE COURT: Mr. Robinson?

5 THE DEFENDANT ROBINSON: No, sir.

6 THE COURT: Mr. Ham?

7 THE DEFENDANT HAM: No, sir.

8 THE COURT: And Mr. Holbrooks?

9 THE DEFENDANT HOLBROOKS: No, sir.

10 THE COURT: Now, you currently have two other rights
11 that I need to discuss with you. One's the right to remain
12 silent and the other is the right against self-incrimination.
13 I tell you that because in order for me to accept your plea
14 you'd have to admit your guilt. To do that you would have to
15 give up your right to remain silent and your right against
16 self-incrimination.

17 First of all, do you understand that you have those
18 two rights, Mr. Wilson?

19 THE DEFENDANT WILSON: Yes, sir.

20 THE COURT: Mr. Ramsey?

21 THE DEFENDANT RAMSEY: Yes, sir.

22 THE COURT: Mr. Robinson?

23 THE DEFENDANT ROBINSON: Yes, sir.

24 THE COURT: And Mr. Ham?

25 THE DEFENDANT HAM: Yes, sir.

1 THE COURT: And Mr. Holbrooks?

2 THE DEFENDANT HOLBROOKS: Yes, sir.

3 THE COURT: And are each of you willing to waive
4 those rights and admit your guilt when asked by the court?

5 Mr. Wilson?

6 THE DEFENDANT WILSON: Yes, sir.

7 THE COURT: Mr. Ramsey?

8 THE DEFENDANT RAMSEY: Yes, sir.

9 THE COURT: Mr. Robinson?

10 THE DEFENDANT ROBINSON: Yes, sir.

11 THE COURT: Mr. Ham?

12 THE DEFENDANT HAM: Yes, sir.

13 THE COURT: And Mr. Holbrooks?

14 THE DEFENDANT HOLBROOKS: Yes, sir.

15 THE COURT: Issues as to -- glasses are crooked.
16 Hard time seeing out of them.

17 Any issue as to forfeiture?

18 MS. WASHINGTON: No, your Honor.

19 MR. MOORMAN: No, sir.

20 MR. WATKINS: Yes, sir. As to Mr. Holbrooks there's
21 a computer.

22 THE COURT: Mr. Holbrooks, do you understand the
23 government may seek to forfeit to them this -- the computer
24 that's involved in this particular offense?

25 THE DEFENDANT HOLBROOKS: Yes, sir.

1 THE COURT: Any issue as to restitution?

2 MR. CAUTHEN: No, sir.

3 MR. WATKINS: No, sir.

4 MR. MOORMAN: No, sir.

5 THE COURT: All right. Do you understand that the
6 offense or offenses to which you're pleading guilty is a felony
7 offense and that if your plea is accepted you may be deprived
8 of valuable civil rights such as the right to vote, to hold
9 public office, to serve on a jury and to possess any kind
10 firearm?

11 Mr. Wilson, do you understand that?

12 THE DEFENDANT WILSON: Yes, sir.

13 THE COURT: Mr. Ramsey?

14 THE DEFENDANT RAMSEY: Yes, sir.

15 THE COURT: Mr. Robinson?

16 THE DEFENDANT ROBINSON: Yes, sir.

17 THE COURT: Mr. Ham?

18 THE DEFENDANT HAM: Yes, sir.

19 THE COURT: And Mr. Holbrooks?

20 THE DEFENDANT HOLBROOKS: Yes, sir.

21 THE COURT: Having discussed all these rights with
22 you, do you still wish to continue with your guilty plea, Mr.
23 Wilson?

24 THE DEFENDANT WILSON: Yes, sir.

25 THE COURT: Mr. Ramsey?

1 THE DEFENDANT RAMSEY: Yes, sir.

2 THE COURT: Mr. Robinson?

3 THE DEFENDANT ROBINSON: Yes, sir.

4 THE COURT: Mr. Ham?

5 THE DEFENDANT HAM: Yes, sir.

6 THE COURT: And Mr. Holbrooks?

7 THE DEFENDANT HOLBROOKS: Yes, sir.

8 THE COURT: Have each of you received a copy of the
9 indictment, that is the written charge made against you in this
10 case, Mr. Wilson?

11 THE DEFENDANT WILSON: Yes, sir.

12 THE COURT: Mr. Ramsey?

13 THE DEFENDANT RAMSEY: Yes, sir.

14 THE COURT: Mr. Robinson?

15 THE DEFENDANT ROBINSON: Yes, sir.

16 THE COURT: Mr. Ham?

17 THE DEFENDANT HAM: Yes, sir.

18 THE COURT: And Mr. Holbrooks?

19 THE DEFENDANT HOLBROOKS: Yes, sir.

20 THE COURT: And have you discussed with your lawyer
21 the charge contained in the indictment and the case in general?
22 Mr. Wilson?

23 THE DEFENDANT WILSON: Yes, sir.

24 THE COURT: Mr. Ramsey?

25 THE DEFENDANT RAMSEY: Yes, sir.

1 THE COURT: Mr. Robinson?

2 THE DEFENDANT ROBINSON: Yes, sir.

3 THE COURT: Mr. Ham?

4 THE DEFENDANT HAM: Yes, sir.

5 THE COURT: And Mr. Holbrooks?

6 THE DEFENDANT HOLBROOKS: Yes, sir.

7 THE COURT: Mr. Ramsey -- I mean, Mr. Wilson, you're
8 pleading guilty to counts three and four. Is that right?

9 MS. WASHINGTON: Yes, sir.

10 THE COURT: All right. Count three alleges that on
11 -- on or about May 5th, 2009, in the district of South
12 Carolina, you knowingly, intentionally and unlawfully did
13 possess with intent to distribute five grams or more of cocaine
14 base commonly known as crack cocaine, a Schedule II substance,
15 in violation of Title 21.

16 Do you understand that's what count three alleges,
17 Mr. Wilson?

18 THE DEFENDANT WILSON: Yes, sir.

19 THE COURT: Count four alleges on the same day in the
20 district of South Carolina you knowingly used and carried a
21 firearm during and in relation to and did possess a firearm in
22 furtherance of a drug trafficking crime which is prosecutable
23 in a court of the United States in violation of Title 18 of the
24 United States Code.

25 Do you understand that's what count four alleges?

1 THE DEFENDANT WILSON: Yes, sir.

2 THE COURT: Now, to prove you guilty of count three
3 the government would have to prove three elements beyond a
4 reasonable doubt: Number one, that you knowingly and
5 intentionally possessed the controlled substance described in
6 the indictment; two, at the time of such possession you knew
7 that the substance was a controlled substance and you possessed
8 the controlled substance with intent to distribute; and five
9 [sic], that the substance was at least five grams of crack
10 cocaine.

11 You understand those are the elements of count three?

12 THE DEFENDANT WILSON: Yes, sir.

13 THE COURT: Do you believe the government can prove
14 those elements?

15 THE DEFENDANT WILSON: What did you say?

16 THE COURT: Do you believe the government can prove
17 those elements?

18 THE DEFENDANT WILSON: Yes, sir.

19 THE COURT: As to count four, two elements: That you
20 committed a drug trafficking offense that may be prosecuted in
21 a court of the United States; and secondly, during and in
22 relation to the commission of the offense you knowingly used or
23 carried or possessed a firearm in furtherance of such offense.

24 You understand those two elements?

25 THE DEFENDANT WILSON: Yes, sir.

1 THE COURT: Do you believe the government can prove
2 those elements?

3 THE DEFENDANT WILSON: Yes, sir.

4 THE COURT: The penalty as to count three is a
5 mandatory minimum of five years, a maximum up to 40 years,
6 maximum fine of two million dollars, supervised release of at
7 least four years, special assessment of \$100.

8 Do you understand that's the penalty for count three?

9 THE DEFENDANT WILSON: Yes, sir.

10 THE COURT: As to count four it's a mandatory minimum
11 of five years consecutive to any other term, maximum up to
12 life, a fine of \$250,000 and a special assessment of \$100.

13 Do you understand that's the penalty for that?

14 THE DEFENDANT WILSON: Yes, sir.

15 THE COURT: All right. Listen to the government's
16 rendition of the facts and see if you agree with them.

17 MS. WASHINGTON: Your Honor, on the date alleged in
18 the indictment officers of the Laurens County Sheriff's Office
19 received information that Mr. Wilson was in a specified area.
20 He had on his person or in his possession crack cocaine for
21 sale. The officers conducted surveillance, at some point
22 decided to conduct a traffic stop. After asking the defendant
23 to exit the vehicle Mr. Wilson apparently tried to run. The
24 officers later searched the car, found about 20 grams of crack
25 cocaine and also in the vehicle in the console were firearms, a

1 Smith and Wesson pistol and a .40 caliber Moss pistol.

2 THE COURT: So what's the drug weight?

3 MS. WASHINGTON: About 23 grams of crack cocaine.

4 THE COURT: Twenty grams?

5 MS. WASHINGTON: Twenty-three.

6 THE COURT: Twenty-three grams.

7 Mr. Wilson -- I'm sorry. Mr. Ramsey -- I'm still on
8 Mr. Wilson.

9 MS. WASHINGTON: Uh-huh.

10 THE COURT: I keep getting ahead of myself.

11 All right. Do you agree with those facts, Mr.
12 Wilson?

13 THE DEFENDANT WILSON: Sir?

14 THE COURT: Do you agree with those facts?

15 THE DEFENDANT WILSON: Yes, sir.

16 THE COURT: Including the drug amount?

17 THE DEFENDANT WILSON: I don't know about the drug
18 amount, but, I mean, I -- I assume that it's correct.

19 THE COURT: All right. Well, if it becomes any
20 doubt about it I can settle that issue at the sentencing.

21 Do you understand that?

22 THE DEFENDANT WILSON: Okay.

23 THE COURT: All right. Now, Mr. Ramsey, you're
24 pleading guilty to count three only. That on or about March
25 24th, 2009, in the district of South Carolina, you having been

1 convicted of a crime punishable by imprisonment for a term
2 exceeding one year, knowingly did possess in and affecting
3 commerce a firearm and ammunition, that is a Charter Arms .38
4 caliber revolver and .38 caliber ammunition, all of which had
5 been shipped and transported in interstate commerce in
6 violation of Title 18 of the United States Code.

7 Do you understand that's what count three alleges?

8 THE DEFENDANT RAMSEY: Yes, sir.

9 THE COURT: The government would have to prove three
10 elements at trial: One, that you had previously been convicted
11 of a crime punishable by a term of imprisonment exceeding
12 one year; that you knowingly possessed and transported, shipped
13 or received the firearm and ammunition; and third, the
14 possession was in or affecting commerce because the firearm
15 and/or ammunition had traveled in interstate or foreign
16 commerce at some point during its existence.

17 Do you understand those are the elements the
18 government must prove?

19 THE DEFENDANT RAMSEY: Yes, sir.

20 THE COURT: Do you believe they can do that?

21 THE DEFENDANT RAMSEY: Yes, sir.

22 THE COURT: The maximum term of imprisonment is up to
23 10 years, a fine of \$250,000 and a term of supervised release
24 in addition to any other term of imprisonment, plus a special
25 assessment of \$100.

1 Do you understand that's the penalty?

2 THE DEFENDANT RAMSEY: Yes, sir.

3 THE COURT: Listen to the government's facts and see
4 if you agree with them.

5 MR. MOORMAN: Your Honor, may it please the court, on
6 March 24th, 2009, the Easley Police Department made a
7 controlled buy of crack cocaine from Mr. Ramsey's co-defendant,
8 Calvin Rogers, at an apartment complex in Pickens County, South
9 Carolina. After they arrested Rogers officers approached the
10 car in which Rogers arrived and spoke to the driver, Heather
11 Rainey. This defendant Ramsey was a passenger in the back
12 seat.

13 Rainey, the driver, gave consent to search and
14 officers found a loaded .38 caliber Charter Arms revolver in
15 the trunk. Ramsey saw the officers had recovered the gun and
16 spontaneously admitted, "That's mine." The Defendant Ramsey
17 was also the only person in the back seat at the time of the
18 search.

19 The revolver -- neither the revolver or ammunition
20 were made in South Carolina had, therefore, traveled in
21 interstate commerce and at the time Ramsey possessed the
22 revolver he had been convicted of distribution of cocaine
23 within one half mile of a park on January 24th, 2008, for which
24 he had not received a pardon.

25 THE COURT: All right. I take judicial notice that

1 that offense carries more than one year.

2 Do you agree with those facts, Mr. Ramsey?

3 THE DEFENDANT RAMSEY: Yes, sir.

4 THE COURT: Okay. Now, Mr. Robinson, you're pleading
5 guilty to count three of an indictment that alleges on or about
6 October 20th, 2008, in the district of South Carolina you
7 knowingly did possess a firearm in furtherance of a drug
8 trafficking crime which is prosecutable in a court of the
9 United States in violation of Title 18.

10 You understand that's what --

11 THE DEFENDANT ROBINSON: Yes, sir.

12 THE COURT: -- the indictment alleges?

13 To prove you guilty the government would have to
14 prove -- to prove -- excuse me, prove two elements beyond a
15 reasonable doubt: Number one, you committed a crime of
16 violence or a drug trafficking crime; and two, that you
17 knowingly used or carried a firearm during and in relation to
18 or possessed the firearm in furtherance of a crime of violence
19 or drug trafficking crime.

20 Do you understand those are the elements of the
21 offense?

22 THE DEFENDANT ROBINSON: Yes, sir.

23 THE COURT: Do you believe the government can prove
24 those elements?

25 THE DEFENDANT ROBINSON: Yes, sir.

1 THE COURT: Penalty is a term of imprisonment of not
2 less than five years, a maximum term of life imprisonment,
3 ineligible for probation or suspension of the sentence during
4 the term of imprisonment imposed herein, a fine of \$250,000, a
5 term of supervised release of at least five years in addition
6 to the term of imprisonment, plus a special assessment fee.

7 That's not consecutive because he's not pleading to
8 anything else?

9 MR. MOORMAN: That's correct, your Honor.

10 THE COURT: All right. Do you understand that's the
11 penalty, Mr. Robinson?

12 THE DEFENDANT ROBINSON: Yes, sir.

13 THE COURT: All right. Listen to the government's
14 facts and see if you agree with them.

15 MR. MOORMAN: May it please the court, on October
16 20th, 2008, Deputy John Brown of Greenville County Sheriff's
17 Office went to the defendant's mother's home on Heather Drive
18 in Greenville, South Carolina to serve an arrest warrant on the
19 defendant. Brown and other deputies knocked on the door and
20 the defendant's mother came to the door after several minutes.
21 Brown asked the defendant's mother if the defendant was in the
22 house. She said yes and told Brown that the defendant was in
23 the second bedroom on the left. The defendant's mother also
24 gave Brown and other deputies permission to come into the home
25 to arrest the defendant.

1 Deputy Brown had the defendant's mother to step out
2 of the home. Brown, Deputy Craig Hawkins and other deputies
3 went to the room. They found the defendant sitting on the bed
4 smoking a cigarette and Hawkins arrested the defendant. Brown
5 then noticed a pill bottle on the floor in plain view that
6 contained what he knew to be multiple rocks of crack cocaine
7 weighing 5.72 grams. Brown also saw in plain view two handguns
8 in a laundry basket at the end of the bed along with
9 ammunition. These firearms were within a few feet of both the
10 defendant and drugs he possessed and he possessed these
11 firearms for the purpose of protecting these drugs.

12 THE COURT: Do you agree with those facts, Mr.
13 Robinson?

14 THE DEFENDANT ROBINSON: Yes, sir.

15 THE COURT: Mr. Ham, you're pleading to counts one,
16 two and three?

17 THE DEFENDANT HAM: Yes, sir.

18 THE COURT: That alleges that on or about
19 September 17th, 2009, in the district of South Carolina, having
20 been convicted of a crime punishable by imprisonment for a term
21 exceeding one year, you knowingly did possess in and affecting
22 commerce a firearm and ammunition, that is a Heckler & Koch .40
23 caliber pistol and .40 caliber ammunition, all of which had
24 been shipped and transported in interstate and foreign
25 commerce.

1 Do you understand that's what count one alleges?

2 THE DEFENDANT HAM: Yes, sir.

3 THE COURT: Count two alleges that on or about
4 September 17th, 2009, in the district of South Carolina you
5 with intent to cause death and serious bodily harm did take
6 from the person and presence of another, to wit, or obtain by
7 force, violence and intimidation a motor vehicle that had been
8 transported, shipped and received in interstate commerce, that
9 is a 2007 Ford bus, tag number RG1088, in violation of Title 18
10 United States Code.

11 Do you understand that's what count two alleges?

12 THE DEFENDANT HAM: Yes, sir.

13 THE COURT: Count three alleges that on the same date
14 in the district of South Carolina you knowingly possessed a
15 firearm during and in relation to and did possess a firearm in
16 furtherance of a crime of violence which is prosecutable in a
17 court of the United States in violation of Title 18 of the
18 United States Code.

19 Do you understand that's what count three alleges?

20 THE DEFENDANT HAM: Yes, sir.

21 THE COURT: As to the felon in possession the
22 government would have to prove three elements beyond a
23 reasonable doubt: One, that you'd been convicted of a crime
24 punishable by imprisonment for a term exceeding one year; two,
25 that after -- after the conviction you knowingly possessed the

1 firearm and ammunition described in the indictment; and three,
2 the possession was in or affecting commerce because the firearm
3 and ammunition had traveled in interstate or foreign commerce
4 during some point of its existence.

5 Do you understand those are the elements?

6 THE DEFENDANT HAM: Yes, sir.

7 THE COURT: Do you believe the government can prove
8 those elements?

9 THE DEFENDANT HAM: Yes, sir.

10 THE COURT: Penalty is a maximum up to life,
11 mandatory minimum of not less than 15 years, a fine of
12 \$250,000, supervised release of up to five years and a special
13 assessment of \$100.

14 Do you understand that's another penalty for count
15 one?

16 THE DEFENDANT HAM: Yes, sir.

17 THE COURT: Count two, the government would have to
18 prove four elements: Number one, that you took a motor
19 vehicle, that is that Ford bus model year 2007 from the
20 presence of Rosalyn Phyll?

21 MR. CAUTHEN: R.P., yes, sir.

22 THE COURT: While taking the other motor vehicle you
23 intended to cause the death of or intended to cause serious
24 bodily harm to R.P.; three, that the motor vehicle had
25 previously crossed state lines; and four, that you took the

1 motor vehicle by use of force and violence or intimidation.

2 Do you understand those are the elements of count
3 two?

4 THE DEFENDANT HAM: Yes, sir.

5 THE COURT: And do you believe the government can
6 prove those elements?

7 THE DEFENDANT HAM: Yes, sir.

8 THE COURT: Penalty is up to -- imprisonment for not
9 more than 15 years, a fine of \$250,000, supervised release of
10 up to three years and a special assessment of \$100.

11 Count three alleges that you committed -- committed a
12 crime of violence that may be prosecuted in a court of the
13 United States; two, that you used or carried a firearm during
14 the crime of violence or possessed the firearm in furtherance
15 of such crime; and three, the carrying or use of the firearm
16 facilitated your commission of the crime of violence or the
17 possession of the firearm advanced the offense in some way.

18 Do you understand those are the elements?

19 THE DEFENDANT HAM: Yes, sir.

20 THE COURT: And you believe that they can prove those
21 elements?

22 THE DEFENDANT HAM: Yes, sir.

23 THE COURT: Penalty for count three, maximum
24 imprisonment of life imprisonment, no probation or suspension,
25 minimum imprisonment of not less than seven years consecutive

1 to any other term, a fine of \$250,000, supervised release for
2 five years and a special assessment of \$100.

3 Do you understand that's the penalty?

4 THE DEFENDANT HAM: Yes, sir.

5 THE COURT: All right. Listen to the government's
6 rendition of the facts and see if you agree with them.

7 MR. CAUTHEN: May it please the court, your Honor, on
8 September 17th of 2009 in Greenville on Mauldin Road officers
9 responded to a suspicious individual that they thought was
10 attempting to break into vehicles located at the business
11 there. As officers responded they found a female located there
12 who was arrested and saw Mr. Ham looking around the corner of
13 one of the vehicles there, who then turned and fled into some
14 nearby woods on foot crossing into Greenville city limits.

15 Mr. Ham -- as he ran and officers started to chase
16 him in their vehicles he ran to the parking lot of Greenville
17 Community Residence which is a group for home mentally disabled
18 persons. There with one of the residents was bus driver R.P.
19 was in the bus described in the indictment, your Honor, waiting
20 to take an individual out of that location. Mr. Ham first of
21 all ran past the bus into some nearby woods while armed with a
22 weapon.

23 He then came back to the bus on the passenger side
24 knocking on the doors telling her to open it, pointing the gun
25 in her direction. She did not do so. Mr. Ham then went to the

1 driver's side, knocked on the door, pointed the gun at her and
2 told her to open it and get out. He pointed the gun in the
3 direction of her head. He got into the van. She went out the
4 other side of the van fearing for her life and/or safety.

5 At that point in time Mr. Ham then took the bus --
6 got in the driver's seat, took the bus and started to drive
7 off. That was a Ford Model E35Y 2007, tag number RG1088, none
8 of which are made in the state of South Carolina, your Honor.
9 It was manufactured outside the state of South Carolina and
10 brought to South Carolina.

11 As he drove off, your Honor, officers who were nearby
12 shot at least one, if not more of the tires located on the bus.
13 They followed him a short distance and then were able to force
14 him to pull the bus over. He then got out of the driver's
15 seat, went out the door -- passenger side door of the bus and
16 started to run up a hill there.

17 Officers on the scene released a K-9 officer that
18 they had with them. That K-9 stopped Mr. Ham as he went up the
19 hill, held him until officers themselves got up the hill and
20 took custody of him, took the K-9 off of him. As they picked
21 him up he was found to have a loaded firearm underneath him.

22 Your Honor, based -- based upon ATF's investigation
23 Mr. Ham was found to have prior felony convictions. A check
24 with Probation, Pardon and Parole Services of South Carolina
25 have indicated he has not received a pardon or been granted

1 authority to own or possess firearms or ammunition. The weapon
2 in this case which they recovered was a Heckler & Koch .40
3 caliber pistol loaded with 13 rounds of .40 caliber ammunition.

4 The weapon in this case, your Honor, the .40 caliber
5 pistol, was manufactured outside the state of South Carolina,
6 specifically in Germany and then transported into South
7 Carolina. The 13 rounds of .40 caliber ammunition were
8 manufactured some in South Dakota, some in Illinois and then
9 transported into South Carolina. Therefore, the firearm and
10 ammunition had each traveled in interstate and/or foreign
11 commerce.

12 With respect to Mr. Ham's prior record, your Honor,
13 he has a conviction for distribution of marijuana dating back
14 to a 1988 indictment, burglary of a building dating back to a
15 '97 indictment, trafficking methamphetamine in 2003, possession
16 with intent to distribute methamphetamine near a school in '03
17 and assault and battery of a high and aggravated nature in
18 2000.

19 THE COURT: All right. I take judicial notice that
20 all those offenses carry more than one year.

21 Do you agree with those facts, Mr. Ham?

22 THE DEFENDANT HAM: I got -- I didn't get in the
23 driver's side of the vehicle. I didn't point the gun at the
24 person.

25 THE COURT: You did point the gun?

1 THE DEFENDANT HAM: I didn't point the gun at the
2 individual.

3 MR. CAUTHEN: The gun was brandished, your Honor.
4 Nonetheless when he went to the passenger side initially, he
5 had the gun in front of him and she could see it and according
6 to the bus driver when she says he went to the other side to
7 get in, the gun was pointed in her direction. Either way the
8 gun was brandished.

9 THE COURT: Do you agree with that?

10 THE DEFENDANT HAM: Yes, sir.

11 THE COURT: Okay.

12 MR. CAUTHEN: Thank you, sir.

13 THE COURT: All right. Mr. Holbrooks, the grand jury
14 charges that on or about March 20th, 2009, in the district of
15 South Carolina you did knowingly possess any matter that
16 contained images of child pornography as defined in Title 18
17 Section 2256(8) of the United States Code that had been mailed
18 and shipped and transported in interstate and foreign commerce
19 by any means, including by a computer, and that were produced
20 using materials that had been mailed and shipped and
21 transported in interstate and foreign commerce by any means,
22 including by a computer, in violation of Title 18 United States
23 Code.

24 Do you understand that's what the indictment alleges?

25 THE DEFENDANT HOLBROOKS: Yes, sir.

1 THE COURT: Now, to prove you guilty the government
2 would have to prove three elements beyond a reasonable doubt:
3 Number one, that you knowingly possessed material that
4 contained images of child pornography; two, that such material
5 containing child pornography had been transported in interstate
6 commerce by any means, including by a computer, or were
7 produced using materials that had been transported in
8 interstate commerce by any means, including a computer; and
9 lastly, that at the time of the possession you believed that
10 some materials contained child pornography.

11 Do you understand those are the elements of the
12 offense?

13 THE DEFENDANT HOLBROOKS: Yes, sir.

14 THE COURT: Do you believe the government can prove
15 those elements?

16 THE DEFENDANT HOLBROOKS: Yes, sir.

17 THE COURT: Penalty is imprisonment up to 10 years
18 and/or a fine up to \$250,000, a term of supervised release for
19 three years and a special assessment of \$100.

20 Do you understand that's the penalty?

21 THE DEFENDANT HOLBROOKS: Yes, sir.

22 THE COURT: Listen to the government's facts and see
23 if you agree with the material facts.

24 MR. WATKINS: May it please the court, your Honor, on
25 February 10th, 2009, a SLED investigation into peer-to-peer

1 network sharing child pornography files revealed that a
2 computer at IP address 75.36.40.143 was sharing suspect
3 material. SLED downloaded a number of files being shared by
4 this user later identified as the defendant. One of those
5 files viewed was a movie in which a female approximately
6 12 years old exposes her genital area and has sex with an adult
7 male.

8 On March 20th, 2009, officers executed a search
9 warrant at the defendant's home in Anderson, South Carolina.
10 Mr. Holbrooks was present, waived his rights and agreed to
11 speak with police. Holbrooks said that he lived at the
12 residence with his father and the only computer in the house
13 was located in his basement room. He said he was the only
14 operator of the computer. He said that he was a Line Wire user
15 and that he often downloaded movies.

16 When asked about a specific child pornography image
17 he was sharing other users, he said he probably downloaded that
18 from Line Wire. The hard drive to the defendant's computer is
19 Seagate which is made in China. The parties stipulate, your
20 Honor, that the defendant be held responsible for 300 images of
21 child pornography and they also stipulate and agree that the
22 images are not of masochism or bondage.

23 THE COURT: Now, how did I get -- the last time when
24 we had one of these stipulations, it turned out that there was
25 bondage and masochism. I don't know that it was your case.

1 MR. WATKINS: It was not, your Honor.

2 THE COURT: All right. Mr. Holbrooks, do you agree
3 with those facts?

4 THE DEFENDANT HOLBROOKS: Yes, sir.

5 THE COURT: Now, you and the government can agree all
6 you want about the number of images and whether or not there
7 was masochism or bondage. I will ask the probation agents when
8 they write the presentence report to give me the truth as they
9 find it and if they be -- if images of masochism or bondage
10 show up, I will take that into account at sentencing.

11 Now, the number of issue -- the number of images is
12 important to you in that that drives the sentencing guidelines.
13 The more images you have, the more -- the higher the guidelines
14 go.

15 You understand that?

16 THE DEFENDANT HOLBROOKS: Yes, sir.

17 THE COURT: Okay.

18 MS. WASHINGTON: Your Honor, before we go forward,
19 can we go back to Mr. Wilson?

20 THE COURT: Sure.

21 MS. WASHINGTON: I told the court that the amount of
22 crack cocaine found in the vehicle was about 23 grams of crack.
23 That is laboratory weight. An analysis was done and that's
24 what the weight is. I think Mr. Wilson, he wasn't sure what
25 the amount was. I think he will admit that it was between five

1 and 23 grams of crack cocaine. Is that right?

2 THE DEFENDANT WILSON: Yes.

3 THE COURT: Okay. And same thing, the amount of
4 cocaine you have goes to relevant conduct. It drives the
5 guidelines. The more you have, the higher the guidelines.

6 You understand that?

7 THE DEFENDANT WILSON: Yes, sir.

8 THE COURT: Okay. I think I went over that with you.
9 I just wanted to make sure.

10 All right. I find that each defendant fully
11 comprehends and understands the nature of the charge against
12 him and generally what elements the government would have to
13 prove if a trial were held. They also understand the maximum
14 possible punishments and where the mandatory minimum would
15 apply, the appropriate defendants responded they understood
16 that, and also as to the consecutive count involving Mr. Ham of
17 seven years, he understands that.

18 Now, following your guilty plea here today the
19 probation agents will begin to write a presentence report. It
20 will contain information about you such as your employment
21 history, your income, your prior record, things about your
22 health, just a variety of things that will go into a report of
23 which you and your lawyer will get a copy, the government will
24 get a copy and I'll get a copy. In the presentence report most
25 important information that you should be concerned about is the

1 probation agent's view as to what is the applicable guideline
2 range for your offense.

3 Now, do you understand the idea about writing the
4 presentence report and what it contains, Mr. Wilson?

5 THE DEFENDANT WILSON: Yes, sir.

6 THE COURT: Mr. Ramsey?

7 THE DEFENDANT RAMSEY: Yes, sir.

8 THE COURT: Mr. Robinson?

9 THE DEFENDANT ROBINSON: Yes, sir.

10 THE COURT: Mr. Ham?

11 THE DEFENDANT HAM: Yes, sir.

12 THE COURT: And Mr. Holbrooks?

13 THE DEFENDANT HOLBROOKS: Yes, sir.

14 THE COURT: Now, have you talked with your respective
15 attorney about how the advisory guidelines might apply to your
16 case, Mr. Wilson?

17 THE DEFENDANT WILSON: Yes, sir.

18 THE COURT: Okay. Mr. Ramsey?

19 THE DEFENDANT RAMSEY: Yes, sir.

20 THE COURT: Mr. Robinson?

21 THE DEFENDANT ROBINSON: Yes, sir.

22 THE COURT: Mr. Ham?

23 THE DEFENDANT HAM: Yes, sir.

24 THE COURT: And Mr. Holbrooks?

25 THE DEFENDANT HOLBROOKS: Yes, sir.

1 THE COURT: Now, your attorney has an ethical and
2 professional duty to give you their best -- best opinion about
3 these guidelines, but in no way should that be construed by you
4 as a promise of a particular sentence.

5 Do you understand that, Mr. Wilson?

6 THE DEFENDANT WILSON: Yes, sir.

7 THE COURT: Mr. Ramsey?

8 THE DEFENDANT RAMSEY: Yes, sir.

9 THE COURT: Mr. Robinson?

10 THE DEFENDANT ROBINSON: Yes, sir.

11 THE COURT: Mr. Ham?

12 THE DEFENDANT HAM: Yes, sir.

13 THE COURT: And Mr. Holbrooks?

14 THE DEFENDANT HOLBROOKS: Yes, sir.

15 THE COURT: Now, once everybody gets a copy of the
16 presentence report, then at the time of sentencing you and your
17 lawyer and the government will have a right to challenge any
18 facts in the presentence report that you disagree with and you
19 can also challenge the recommended advisory guideline. If an
20 objection's made, then I will resolve that dispute between you
21 and the government.

22 Do you understand that, Mr. Wilson?

23 THE DEFENDANT WILSON: Yes, sir.

24 THE COURT: Mr. Ramsey?

25 THE DEFENDANT RAMSEY: Yes, sir.

1 THE COURT: Mr. Robinson?

2 THE DEFENDANT ROBINSON: Yes, sir.

3 THE COURT: Mr. Ham?

4 THE DEFENDANT HAM: Yes, sir.

5 THE COURT: And Mr. Holbrooks?

6 THE DEFENDANT HOLBROOKS: Yes, sir.

7 THE COURT: Now, do you understand that the sentence
8 that's actually imposed might be different from any estimate
9 your attorney or for that matter anyone else may have given to
10 you?

11 Mr. Wilson?

12 THE DEFENDANT WILSON: Yes, sir.

13 THE COURT: Mr. Ramsey?

14 THE DEFENDANT RAMSEY: Yes, sir.

15 THE COURT: Mr. Robinson?

16 THE DEFENDANT ROBINSON: Yes, sir.

17 THE COURT: Mr. Ham?

18 THE DEFENDANT HAM: Yes, sir.

19 THE COURT: Mr. Holbrooks?

20 THE DEFENDANT HOLBROOKS: Yes, sir.

21 THE COURT: Now, when it comes time for sentencing, I
22 have three options. First of all, I have to consider the
23 advisory sentencing guidelines right off the bat. After
24 considering them the three options are I can sentence you
25 within the guideline range or I could depart upwardly, which

1 would be a more severe sentence, or could I depart downwardly,
2 which would be a less severe sentence after considering the
3 presentence report and certain statutory factors.

4 Mr. Wilson, do you understand that?

5 THE DEFENDANT WILSON: Yes, sir.

6 THE COURT: Mr. Ramsey?

7 THE DEFENDANT RAMSEY: Yes, sir.

8 THE COURT: Mr. Robinson?

9 THE DEFENDANT ROBINSON: Yes, sir.

10 THE COURT: Mr. Ham?

11 THE DEFENDANT HAM: Yes, sir.

12 THE COURT: And Mr. Holbrooks?

13 THE DEFENDANT HOLBROOKS: Yes, sir.

14 THE COURT: Now, do you understand that under certain
15 limited circumstances you and/or the government can appeal any
16 sentence that I might impose?

17 Mr. Wilson, do you understand you have that right?

18 THE DEFENDANT WILSON: Yes, sir.

19 THE COURT: Mr. Ramsey?

20 THE DEFENDANT RAMSEY: Yes, sir.

21 THE COURT: Mr. Robinson?

22 THE DEFENDANT ROBINSON: Yes, sir.

23 THE COURT: Mr. Ham?

24 THE DEFENDANT HAM: Yes, sir.

25 THE COURT: And Mr. Holbrooks?

1 THE DEFENDANT HOLBROOKS: Yes, sir.

2 THE COURT: Now, if you're sentenced more harshly
3 than you think you should have been, do you understand you
4 won't be permitted to withdraw your guilty plea?

5 Mr. Wilson?

6 THE DEFENDANT WILSON: Yes, sir.

7 THE COURT: Mr. Ramsey?

8 THE DEFENDANT RAMSEY: Yes, sir.

9 THE COURT: Mr. Robinson?

10 THE DEFENDANT ROBINSON: Yes, sir.

11 THE COURT: Mr. Ham?

12 THE DEFENDANT HAM: Yes, sir.

13 THE COURT: And Mr. Holbrooks?

14 THE DEFENDANT HOLBROOKS: Yes, sir.

15 THE COURT: Now, if you are sent to prison you won't
16 be released on parole because in the federal system it has been
17 abolished unlike in the state system, and if you recall while
18 ago when I was going over the penalties with you I talked with
19 you about the period of supervised release. When you come out
20 of prison, you will be under a court order of supervised
21 release that will control your conduct while you're under that
22 supervision period and if you violate the terms and conditions
23 of your supervised release, you could be sent back to prison.

24 Do you understand that, Mr. Wilson?

25 THE DEFENDANT WILSON: Yes, sir.

1 THE COURT: Mr. Ramsey?

2 THE DEFENDANT RAMSEY: Yes, sir.

3 THE COURT: Mr. Robinson?

4 THE DEFENDANT ROBINSON: Yes, sir.

5 THE COURT: Mr. Ham?

6 THE DEFENDANT HAM: Yes, sir.

7 THE COURT: And Mr. Holbrooks?

8 THE DEFENDANT HOLBROOKS: Yes, sir.

9 THE COURT: Are there any plea agreements in these
10 cases?

11 MR. CAUTHEN: No, sir.

12 THE COURT: None?

13 MR. MOORMAN: The only agreement as relates to Mr.
14 Ramsey and Mr. Robinson is that the government would move to
15 dismiss the remaining counts of the indictment at sentencing.

16 THE COURT: Same is true for you?

17 MR. WATKINS: Yes, sir. Your Honor, with Mr.
18 Holbrooks the only thing is the oral stipulations. And I've
19 been playing over in my mind, your Honor. We talked about the
20 stipulations and I'm not confident that I remember hearing you
21 ask him if he actually agreed with the facts. You probably
22 did, but just to be safe I would ask the court to inquire.

23 THE COURT: Okay. Mr. Holbrooks, do you agree with
24 the rendition of the facts that the government gave while ago?

25 THE DEFENDANT HOLBROOKS: Yes, sir.

1 THE COURT: Okay. All right. Now, which two Mr.
2 Moorman?

3 MR. MOORMAN: Mr. Ramsey and Mr. Robinson.

4 THE COURT: All right. Mr. Ramsey and Mr. Robinson,
5 the government contends that the only promise they have made to
6 you is to dismiss the remaining counts of the indictment after
7 you're sentenced.

8 Is that your understanding, Mr. Ramsey?

9 THE DEFENDANT RAMSEY: Yes, sir.

10 THE COURT: And Mr. Robinson?

11 THE DEFENDANT ROBINSON: Yes, sir.

12 THE COURT: Has anyone threatened you or anyone else
13 forced you in any way to get you to plead guilty, Mr. Wilson?

14 THE DEFENDANT WILSON: No, sir.

15 THE COURT: Mr. Ramsey?

16 THE DEFENDANT RAMSEY: No, sir.

17 THE COURT: Mr. Robinson?

18 THE DEFENDANT ROBINSON: No, sir.

19 THE COURT: Mr. Ham?

20 THE DEFENDANT HAM: No, sir.

21 THE COURT: And Mr. Holbrooks?

22 THE DEFENDANT HOLBROOKS: No, sir.

23 THE COURT: And are each of you pleading guilty to
24 your own free will because you are guilty, Mr. Wilson?

25 THE DEFENDANT WILSON: Yes, sir.

1 THE COURT: Mr. Ramsey?

2 THE DEFENDANT RAMSEY: Yes, sir.

3 THE COURT: Mr. Robinson?

4 THE DEFENDANT ROBINSON: Yes, sir.

5 THE COURT: And Mr. Ham?

6 THE DEFENDANT HAM: Yes, sir.

7 THE COURT: And Mr. Holbrooks?

8 THE DEFENDANT HOLBROOKS: Yes, sir.

9 THE COURT: Now, early on you told me that you and
10 your lawyer talked about the case. Are you aware that your
11 attorney has talked to the respective United States attorney
12 about your case and gathered certain information such as
13 discovery information and so forth?

14 Are you aware that that conversation has taken place,
15 Mr. Wilson?

16 THE DEFENDANT WILSON: Yes, sir.

17 THE COURT: Mr. Ramsey?

18 THE DEFENDANT RAMSEY: Yes, sir.

19 THE COURT: Mr. Robinson?

20 THE DEFENDANT ROBINSON: Yes, sir.

21 THE COURT: Mr. Ham?

22 THE DEFENDANT HAM: Yes, sir.

23 THE COURT: And Mr. Holbrooks?

24 THE DEFENDANT HOLBROOKS: Yes, sir.

25 THE COURT: And has or did the information that your

1 lawyer shared with you that either he or she got from the
2 government led in part to your decision to plead guilty, Mr.
3 Wilson?

4 THE DEFENDANT WILSON: Yes, sir.

5 THE COURT: Mr. Ramsey?

6 THE DEFENDANT RAMSEY: Yes, sir.

7 THE COURT: Mr. Robinson?

8 THE DEFENDANT ROBINSON: Yes, sir.

9 THE COURT: Mr. Ham?

10 THE DEFENDANT HAM: Yes, sir.

11 THE COURT: And Mr. Holbrooks?

12 THE DEFENDANT HOLBROOKS: Yes, sir.

13 THE COURT: Has anyone made any prediction, prophecy
14 or promise to you as to what your sentence will be, Mr. Wilson?

15 THE DEFENDANT WILSON: No promise has been made.

16 THE COURT: Okay. Mr. Ramsey?

17 THE DEFENDANT RAMSEY: No, sir.

18 THE COURT: Mr. Robinson?

19 THE DEFENDANT ROBINSON: No, sir.

20 THE COURT: Mr. Ham?

21 THE DEFENDANT HAM: No, sir.

22 THE COURT: Mr. Holbrooks?

23 THE DEFENDANT HOLBROOKS: No, sir.

24 THE COURT: Finally, has anyone told you how to
25 answer these questions, Mr. Wilson?

1 THE DEFENDANT WILSON: No, sir.

2 THE COURT: Mr. Ramsey?

3 THE DEFENDANT RAMSEY: No, sir.

4 THE COURT: Mr. Robinson?

5 THE DEFENDANT ROBINSON: No, sir.

6 THE COURT: Mr. Ham?

7 THE DEFENDANT HAM: No, sir.

8 THE COURT: Mr. Holbrooks?

9 THE DEFENDANT HOLBROOKS: No, sir.

10 THE COURT: In other words, the answers you've given
11 me have been your own answers and they've been truthful, Mr.
12 Wilson?

13 THE DEFENDANT WILSON: Yes, sir.

14 THE COURT: Mr. Ramsey?

15 THE DEFENDANT RAMSEY: Yes, sir.

16 THE COURT: Mr. Robinson?

17 THE DEFENDANT ROBINSON: Yes, sir.

18 THE COURT: Mr. Ham?

19 THE DEFENDANT HAM: Yes, sir.

20 THE COURT: And Mr. Holbrooks?

21 THE DEFENDANT HOLBROOKS: Yes, sir.

22 THE COURT: Anything further from the government?

23 MR. CAUTHEN: Not as to Mr. Ham, your Honor.

24 THE COURT: Okay.

25 MS. WASHINGTON: Nothing, your Honor.

1 MR. MOORMAN: No, your Honor.

2 THE COURT: Any defense counsel need anything else
3 covered in the record?

4 MR. SEAY: Yes, sir. Mr. Holbrooks remain out on
5 bond? I don't think the government's opposed.

6 THE COURT: I don't guess there's any objection to
7 it.

8 MR. WATKINS: No objection from the government.

9 THE COURT: Without objection.

10 It's the finding of the court in the case of the
11 United States versus Brad Venson Wilson, Eric Charles Ramsey,
12 Marcus Robinson, John Forrest Ham, Jr., Kevin Cortez Holbrooks,
13 that each of the defendants are fully capable and competent of
14 entering an informed plea and have done so here today freely,
15 voluntarily, knowingly and intelligently, with the pleas being
16 supported by an independent basis in fact containing all the
17 elements of the offense, therefore, each defendant is adjudged
18 guilty of the counts -- count or counts to which they have pled
19 guilty to. See you in about 45 days.

20 MR. CAUTHEN: Thank you, your Honor.

21 ***

22

23

24

25

1 I certify the foregoing is a correct transcript from the record
2 of proceedings in the above entitled matter.

3 S/Jean L. Cole, RMR 10/25/2010
4

5 _____
6 Jean L. Cole, RMR

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA)
)
 -versus-)
)
 JOHN FORREST HAM, JR.) 6:10-46
)
 Defendant) 08/31/2010
)
) Spartanburg, SC
)
 _____)

SENTENCING

BEFORE THE HONORABLE HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

For the Government: MAXWELL B. CAUTHEN, III, AUSA
U.S. Attorney's Office
105 N. Spring Street
Greenville, SC 29601

For the Defendant: JAMES B. LOGGINS, AFPD
Federal Public Defender's Office
Two Liberty Square
Greenville, SC 29601

Court Reporter: Jean L. Cole, RMR
U.S. District Court Reporter
PO Box 10732
Greenville, SC 29603

The proceedings were taken by mechanical stenography and the transcript produced by computer.

1 MR. CAUTHEN: May it please the court.

2 THE COURT: Yes, sir, Mr. Cauthen.

3 MR. CAUTHEN: Your Honor. The next case scheduled
4 for sentencing is 6:10-46, the United States versus John
5 Forrest Ham, Jr. The presentence report has been completed and
6 there were no objections filed, your Honor.

7 THE COURT: Mr. Ham, have you gone over the
8 presentence report with your lawyer?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have any questions about it?

11 THE DEFENDANT: No, sir.

12 THE COURT: When you started out, you were looking as
13 to count one at least 15 years, but not more than life; count
14 two, 15 years; count three at least seven years, but not more
15 than life; supervised release on counts one and three are five
16 years each, count two is three years; not eligible for
17 probation. The fine is a total \$750,000, which is 250,000 per
18 count. Special assessment total of \$300 computed at \$100 per
19 count.

20 When they did the guidelines, your total offense
21 level came back at 31, your criminal history category was VI.
22 You've been designated a career offender and an armed career
23 offender. Probation ineligible. Guideline range of 188 to
24 235 months plus 84 months consecutive; at least three but not
25 more than five years supervised release; fine and restitution

1 not calculated or not applicable and \$300 special assessment.

2 Do you understand that's what the guidelines say?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: There being no objections, I would -- I
5 would adopt the guideline provisions for purposes of
6 determining the reasonableness of my sentence. I would also
7 adopt the factual findings in the presentence report as a basis
8 in fact for determining the 3553(a) factors.

9 Mr. Cauthen.

10 MR. CAUTHEN: May it please the court, your Honor.
11 Judge with respect to those factors contained in 3553(a), this
12 case involved two of the three counts dealing with possession
13 of a firearm and possession of a firearm during a crime of
14 violence, something which we are seeing more and more of and
15 this court is seeing a lot more of in recent months here in
16 this district.

17 The defendant, your Honor, as you have noted in going
18 over the presentence report, has a substantial criminal record
19 consisting of various drug offenses and crimes of violence and,
20 therefore, the government would respectfully request that a
21 sentence within the guideline range is appropriate. One, it
22 would promote respect for the law based on his prior record,
23 based on his actions in this case and it would insure the
24 safety of the public based upon the guidelines in this case and
25 the actions which the defendant committed.

1 THE COURT: Okay. Mr. Loggins.

2 MR. LOGGINS: May it please the court. Your Honor,
3 we have no objections to the report. We think it makes an
4 accurate reflection unfortunately of my client's past and his
5 actions in this particular case. His range is 22 to 26 years,
6 272 over 26 years. That is a significant amount of time for
7 any charge.

8 In full disclosure to the court my client has pending
9 state charges that he has pled to in Greenville County. He has
10 pending awaiting to be sentenced on state charges in Pickens
11 County and he's waiting to be sentenced on state grand jury.
12 All three of those are scheduled for tomorrow. I've had the
13 cooperation of John Grout, the State Attorney General's Office,
14 from Mark Moyer from the Solicitor's Office, from Max Cauthen,
15 from Judge Stillwell and from Mills Ariail to arrange to get
16 this man out of state custody and into federal custody for
17 today, which included the termination of a parole revocation he
18 was currently serving at Perry at the time, so a lot of people
19 have done a lot of work for him to get this whole sentencing
20 set up in this fashion. It saves the state a tremendous amount
21 of time on trying at least two of the three cases based upon
22 the fact that he would have been -- they say would have loaded
23 him up had they pursued that.

24 He also assisted Mr. -- he's not asking for benefit
25 today, but he did assist John Grout with a 900 gram purchase

1 from a man by name of Salvator Chavez, who's currently in
2 federal custody, and they found two more pounds of
3 methamphetamine at that man's house when they went. So as bad
4 as the record is he's also been trying to get a little bit back
5 on the right side.

6 We're just asking you to find a sentence within the
7 guideline range. Twenty-two years on the low end is still a
8 large number, but we think a sentencing there is appropriate.
9 He does have family here today. His mother and father are back
10 there on the side. They're here in support. They called me
11 during the time, have been interested in what he's doing. If
12 you read the record you'd think you have a lost man up here.
13 He's been surprisingly easy to deal with. He's
14 been surprisingly understanding of the process and what can be
15 done for him, but he's got people on the outside, your Honor.
16 We're just asking you to follow the guideline range.

17 THE COURT: Mr. Ham, anything you'd like to say?

18 THE DEFENDANT: No, sir.

19 THE COURT: I would adopt the government's rendition
20 of the 3553(a) factors and I would emphasize that this was a
21 very egregious case, particularly since the victim was a
22 special needs person.

23 After considering the Sentencing Reform Act of 1984
24 and the advisory nature of the sentencing guidelines, as well
25 as the discretionary nature of sentencing factors in 18 USC

1 3553(a), it's the sentence of the court that you, John Forrest
2 Ham, be hereby committed to the custody of the Bureau of
3 Prisons to be imprisoned for a term of 319 months. This term
4 consists of 235 months as to count one and 180 months as to
5 count two, those are to run concurrently and 84 months as to
6 count three to run consecutive. Also ordered to pay a \$300
7 special assessment.

8 Upon release from imprisonment shall be placed on
9 supervised release for a term of five years. This term
10 consists of five years as to counts one and three and three
11 years as to count two, all terms to run concurrently.

12 Within 72 hours of release from the BOP you shall
13 report in person to the probation office in the district to
14 which you're released. While on supervised release you shall
15 comply with the mandatory and standard conditions of
16 supervision outlined in 18 USC 3583(d) and also comply with the
17 following special condition: Participate in a program of
18 testing and treatment for substance abuse as directed by the
19 probation officer until you're ordered released by the agent.

20 Pursuant to the Mandatory Detention Act I find you're
21 not a suitable candidate for voluntary surrender and would
22 remand you to the custody of the marshals. You have 14 days
23 from the date of entry of judgment to file any notice of intent
24 to appeal. Good luck to you.

25 MR. LOGGINS: Your Honor, one other thing. I

1 promised the solicitor I would ask for this. It is my
2 understanding that the writ to get him in Pickens is already
3 working its way through the system at the moment, but I
4 promised Mr. Moyer I'd ask for the judge to order that the writ
5 be granted at the appropriate time I'd appreciate it.

6 THE COURT: Say again.

7 MR. LOGGINS: I promised Mr. Moyer, the state
8 solicitor, that there would be a writ issued for him to be in
9 Pickens County tomorrow to be sentenced on those charges.

10 THE COURT: Okay.

11 MR. LOGGINS: It's my understanding that writ is
12 working its way through the system, but since I have promised
13 him I would ask for it in court, I'm also making that same
14 request that you issue the writ.

15 THE COURT: Okay.

16 MR. CAUTHEN: I don't have any objection.

17 THE COURT: Without objection.

18 MR. LOGGINS: Thank you.

19 MR. CAUTHEN: Thank you, Judge.

20 ***

21

22

23

24

25

1 I certify the foregoing is a correct transcript from the record
2 of proceedings in the above entitled matter.

3 S/Jean L. Cole, RMR 10/25/2010
4

5 _____
6 Jean L. Cole, RMR

Date

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	Criminal Number 6:10-cr-00046-HFF
vs.	)	
	)	<u>ORDER</u>
JOHN HAM	)	
_____	)	

The State of South Carolina has petitioned this court to temporarily release federal inmate JOHN HAM to its custody, or the custody of its duly appointed representative, from September 1-3, 2010, for the purpose of appearing in Pickens County General Sessions Court. After reviewing the facts and considering all the relevant factors in this matter, this court finds that the petition should be granted.

Now, therefore,

IT IS ORDERED that the United States Marshal for the District of South Carolina is directed to transfer custody of federal inmate JOHN HAM to the State of South Carolina, or its duly appointed representative, on September 1, 2010, for the purpose of appearing in Pickens County General Sessions Court. Transportation will be provided by state authorities. JOHN HAM shall be returned to federal custody at his current place of incarceration following his appearance in Pickens County General Sessions Court, but in no event later than 5:00 p.m. on September 3, 2010.

IT IS SO ORDERED.

s/Kevin F. McDonald
United States Magistrate Judge

August 31, 2010
Greenville, South Carolina

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	CR. NO. 6:10-46(HFF)
-vs-	)	
	)	
JOHN FOREST HAM	)	

NOTICE OF APPEAL

Notice is hereby given that, JOHN FOREST HAM, defendant named above, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the judgment entered in this action before The Honorable HENRY F. FLOYD, United States District Judge on the 10th day of September, 2010.

BY: s/James B. Loggins
James B. Loggins, Assistant
Federal Public Defender
75 Beattie Place, Suite 950
Greenville, SC 29601
(864) 235-8714

September 14, 2010

Greenville, South Carolina

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4992

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN FORREST HAM, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry F. Floyd, District Judge. (6:10-cr-00046-HFF-1)

Submitted: May 26, 2011

Decided: July 12, 2011

Before WILKINSON, NIEMEYER, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James B. Loggins, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Maxwell B. Cauthen, III, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Forrest Ham, Jr., appeals his conviction and 319-month sentence imposed by the district court following a guilty plea to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e) (2006) (Count One); carjacking, in violation of 18 U.S.C. § 2119(1) (2006) (Count Two); and possession of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1) (2006). Ham's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), finding no meritorious grounds for appeal but questioning the reasonableness of Ham's sentence. Ham filed a pro se supplemental brief arguing that the district court erred by designating him as an armed career criminal and a career offender and by assessing criminal history points for certain prior convictions. For the reasons that follow, we affirm.

This court reviews a sentence for reasonableness, applying an abuse of discretion standard. Gall v. United States, 552 U.S. 38, 51 (2007); see also United States v. Llamas, 599 F.3d 381, 387 (4th Cir. 2010). This review requires appellate consideration of both the procedural and substantive reasonableness of a sentence. Gall, 552 U.S. at 51.

In determining procedural reasonableness, this court considers whether the district court properly calculated the

defendant's advisory Guidelines range, considered the § 3553(a) factors, analyzed any arguments presented by the parties, and sufficiently explained the selected sentence. Id.

"Regardless of whether the district court imposes an above, below, or within-Guidelines sentence, it must place on the record an individualized assessment based on the particular facts of the case before it." United States v. Carter, 564 F.3d 325, 330 (4th Cir. 2009) (internal quotation marks omitted). An extensive explanation is not required as long as the appellate court is satisfied "'that [the district court] has considered the parties' arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority.'" United States v. Engle, 592 F.3d 495, 500 (4th Cir.) (quoting Rita v. United States, 551 U.S. 338, 356 (2007)) (alterations in original), cert. denied, 131 S. Ct. 165 (2010). If the court finds "no significant procedural error," it next assesses the substantive reasonableness of the sentence, taking "'into account the totality of the circumstances, including the extent of any variance from the Guidelines range.'" United States v. Morace, 594 F.3d 340, 345-46 (4th Cir.) (quoting Gall, 552 U.S. at 51), cert. denied, 131 S. Ct. 307 (2010).

Because Ham did not request a sentence different than the one ultimately imposed, we review his sentence for plain error. United States v. Lynn, 592 F.3d 572, 578-79 (4th Cir.

2010). To establish plain error, Ham "must show: (1) an error was made; (2) the error is plain; and (3) the error affects substantial rights." United States v. Massenburg, 564 F.3d 337, 342-43 (4th Cir. 2009). Even if Ham satisfies these requirements, "correction of the error remains within [the court's] discretion, which [the court] should not exercise . . . unless the error affect[s] the fairness, integrity or public reputation of judicial proceedings." United States v. Muhammad, 478 F.3d 247, 249 (4th Cir. 2007).

With these standards in mind, we have reviewed the record and conclude that Ham's sentence is both procedurally and substantively reasonable. In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Ham's convictions and sentence.

This court requires that counsel inform Ham, in writing, of the right to petition the Supreme Court of the United States for further review. If Ham requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Ham. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

FILED: August 3, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4992
(6:10-cr-00046-HFF-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOHN FORREST HAM, JR.

Defendant - Appellant

M A N D A T E

The judgment of this court, entered 7/12/2011, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

FILED: July 12, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4992
(6:10-cr-00046-HFF-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOHN FORREST HAM, JR.

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

RECEIVED
CLERK, GREENVILLE, SC

2012 JUL -5 PM 12:20

United States District Court		District <u>South Carolina</u>
Name (under which you were convicted): <u>John Forrest Ham Jr.</u>		Docket or Case No.: <u>6:10-cr-00046</u>
Place of Confinement: <u>S.C.D.C. Lieber</u>		Prisoner No.: <u>20571-171</u>
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <u>John Forrest Ham Jr.</u>

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

U.S. District Court

300 E. Washington St.

Greenville S.C. 29601

(b) Criminal docket or case number (if you know): 6:10-cr-46

2. (a) Date of the judgment of conviction (if you know): 5-12-2010

(b) Date of sentencing: 8-31-2010

3. Length of sentence: 319 months

4. Nature of crime (all counts):

Felon in Possession of a Firearm

Cardacking

Use of a Firearm during a violent crime

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: *U.S. Court of Appeals For the Fourth Circuit*
- (b) Docket or case number (if you know): *10:4992*
- (c) Result: *aFFirmed*
- (d) Date of result (if you know): *7-12-2011*
- (e) Citation to the case (if you know):
- (f) Grounds raised:

My attorney Filed an anders Brief. I Filed a Pro Se Supplemental Brief which raised several grounds about my P.S.R. being incorrect in classifying me as an armed career criminal or career offender, and it was incorrect as far as my Criminal History Points and Category.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: IneFFective assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. my attorney sent me my PSR, and a letter on 6-9-10 and stated "After you have had an opportunity to review the report, I will come by the jail so we can discuss any objections or concerns you may have. We must make a written response to the Probation Office by 6-19-10, concerning any exceptions which we take to this report." 2. He never showed up. 3. I sent him a letter on 6-17-10 and told him I did not agree with the PSR, and 5 pages worth of what I saw wrong. 4. He did not request any changes on the addendum. 5. He didn't mail my letter to the Judge or Probation as I requested. 6. at sentencing he told me not to bring this up.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: InEFFECTive assistance of counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. My attorney didn't inform me, or respond to the fact I brought to his attention in my letter of 6-17-10, that #20 on the P.S.R. is not an armed career criminal predicate because it is a 3rd degree Burglary of a Building 2. The P.S.R. shows "Burglary," not 3rd degree Burglary of a Building as it should. This was left out intentionally and deceitfully. 3. 3rd degree burglary is not a violent felony by the S.C. statute, therefore is not an armed career criminal predicate. 4. The underlying circumstances can not be considered when looking at a charge to be considered as a predicate offense, only the statute. 5. #20 on the P.S.R. is wrong on my CR History category since this is 3rd degree burglary.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: IneFFective assistance oF Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. My attorney didn't inform me or respond to the fact that #21 on the P.S.R. is not a career offender predicate because it was over ten years old. 2. It should be 2 criminal history points, not 3. 3. It is wrong where it states 7-25-03 Prob. revK. 3 yrs & term, because I got sentenced for 1 yr on #22 and #23 on 1-7-02 which is before 7-25-03 but after 3-8-99. 4. This makes #28 on the P.S.R. wrong since I'm not a career offender.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: IneFFective assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. #22 and #23 on the P.S.R. should add a total of 2 points not 4 (2 a piece), because there was no intervening arrest. My attorney did not respond to this. 2. This made my Criminal History category higher.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

10.a.

Ground Five: Ineffective assistance of Counsel

(a) Supporting Facts: 1. My attorney did not address the fact that #25 Criminal History computation should be 7 not 10.

2. #21 of the P.S.R. is 2, not 3. 3. #22 and #23 is 2 points together, not a piece. a total of 2, not 4.

(b) Direct appeal of Ground ~~one~~ Five:

(1) No

(2) I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

Ground Six: Ineffective assistance of Counsel

(a) Supporting Facts: 1. My attorney did not address the fact that #26 of the P.S.R. is incorrect because my Probation expired on December of 2008. 2. My Probation was not violated before it expired. 3. My Probation was not extended by any Judge or Court or Warrant. 4. Two Criminal History Points should not be added, it should stay at the 7 as stated above.

(b) Direct appeal of Ground Six:

(1) No

(2) I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

Ground Seven: Ineffective assistance of Counsel

(a) Supporting Facts: 1. My attorney didn't inform me that if I had no "Mens Rea" or knowledge of a person in the vehicle, it wasn't Kidnaping. 2. #46 of the P.S.R. therefore is incorrect, there should not be 4 points added. 3. #52 of the P.S.R. should be 24 not 28.

(b) Direct appeal of Ground Seven:

(1) No

(2) I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

10. b.

Ground Eight: IneFFective assistance of Counsel

(a) SuPPorting Facts: 1. My attorney did not address the issue of #53 in my PSR, being wrong because I should not be classified as an armed career criminal and/or a career offender. 2. I should not have an offense level of 34 or 29. 3. The chapter 4 enhancements do not apply.

(b) Direct appeal of Ground Eight:

(1) No

(2) I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

Ground Nine: IneFFective assistance of Counsel

(a) SuPPorting Facts: 1. my attorney did not address the fact that the Firearm statute states "Except to the extent that a greater minimum sentence is otherwise provided by this subsection or any other provision of law" 18 USC 924(c)(1)(A) 2. The fact is if I have a greater Mandatory Minimum applied that the 84 month Mandatory Minimum in #58 of the PSR, should not apply. 3. Count one has a Mandatory Minimum of 15 years, which should abolish the 7 year mandatory minimum of Count Three because of the "Except" Clause in the Statute.

(b) Direct appeal of Ground Nine:

(1) No

(2) I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

Ground Ten: IneFFective assistance of Counsel

(a) SuPPorting Facts: 1. My attorney did not address the issue that #58 of the PSR, is way out of range because of Grounds #2 thru #9 that I have Presented to him and now am Presenting to this Court.

(b) Direct appeal of Ground Ten:

(1) No

(2) I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

Ground Eleven: Ineffective Assistance of Counsel

(a) Supporting Facts: 1. My attorney did not bring up any issues on appeal that I questioned him about in person and in letters before and after sentencing. 2. My attorney did not even respond to me about issues I asked him to raise on appeal. in a letter.

(b) Direct appeal of Ground Eleven:

(1) No

(2) I did not know if or how it could be raised, but asked my attorney and received no assistance.

Ground Twelve: Ineffective Assistance of Counsel.

(a) Supporting Facts: 1. My attorney didn't explore the fact if I have mental health issues, which I raised to him in my letter dated 6-17-10. 2. My attorney did not raise this issue to the court or give the judge, solicitor or probation officer a copy of the letter as I requested him to do.

(b) Direct appeal of Ground Twelve:

(1) No

(2) I did not know if or how it could be raised and my attorney would not respond to my questions on this matter.

Ground Thirteen: Ineffective assistance of Counsel.

(a) Supporting Facts: 1. My attorney guaranteed me that he had it worked out with the Federal Prosecutor, my two different State attorneys, and two different State Prosecutors that if I plead guilty on 8-31-10 in Federal Court I would do my time in Federal Prison with

10.d.

my State time run concurrent. 2. My attorney assured me since I had not been sentenced in State Court yet, I would do my Federal sentence immediately after the Federal sentencing on 8-31-10. 3. My attorney told me if I did not Plead guilty on 8-31-10 that the State Prosecutors would sentence me First and I would do my State time then do my Federal time. 4. My attorney used this deal as leverage to get me to Plead guilty in Federal and State Courts. 5. My attorney came to see me once approximately on 4-10-11 and once on approximately 4-28-11 and both times told me it was his Fault I was in State Prison and my Federal time was not running.

(b) Direct appeal of Ground Thirteen:

(1) No

(2) I did not know of this situation in time for direct appeal.

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: None of these grounds #1 thru #11 have

Previously been Presented in any Federal Court. My reasons
For not Presenting them is that my attorney would not
help me Present any of them on appeal and this is my first
opportunity to Present them to where I think I know how,
I don't know what a Petition For Certiorari is or how to use it or any others.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

James Loggins
Two Liberty Square
75 Beattie Place, Suite 950
Greenville S.C. 29601

(e) On appeal:

Anders Brief

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒ *I have a concurrent sentence.*

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: *Greenville County SC, and Pickens County SC,*

(b) Give the date the other sentence was imposed: *9-1-10*

(c) Give the length of the other sentence: *25 concurrent with Fed. sentence of 8-31-10*

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐ *I should be going back on my P.C.R. For those charges any day now.*

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Vacate or Set aside
sentence to amend the P.S.R. and consider all other issues and
resentence, a Time reduction.
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 7-2-12 (date).

John Forrest Ham Jr.
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion.

I am currently on a writ at: John Ham
Henderson County
375 First ave. East
Hendersonville N.C. 28793

By 8-1-2012 I should be back at:
John Ham 240615
L.C.I. Max B-142
P.O. Box 205
Ridgeville S.C. 29472

**FEDERAL PUBLIC DEFENDER
DISTRICT OF SOUTH CAROLINA**

Parks N. Small

Federal Public Defender

BB&T Bank Building
1901 Assembly Street, Suite 200
Columbia, S.C. 29201
Tel: (803) 765-5070
Fax: (803) 765-5084

145 King Street, Suite 325
P.O. Box 876
Charleston, S.C. 29402
Tel: (843) 727-4148
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75 Beattie Place, Suite 950
Greenville, S.C. 29601
Tel: (864) 235-8714
Fax: (864) 233-0188

McMillan Federal Building
401 West Evans Street, Suite 221
P.O. Box 1873
Florence, S.C. 29503-1873
Tel: (843) 662-1510
Fax: (843) 667-1355

Reply to: Greenville

June 9, 2010

Mr. John Forrest Ham, Jr., #240615
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

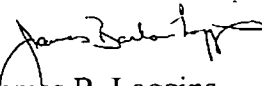
RE: Your Presentence Report

Dear Mr. Ham:

Please find enclosed a copy of your Presentence Report prepared by the probation office. After you have had an opportunity to review the report, I will come by the jail to visit so we can discuss any objections or concerns you may have. We must make a written response to the probation office by **June 19, 2010**, concerning any exceptions which we take to this report.

Please note paragraph **70** which sets forth your total guideline range of **272 - 319 months** imprisonment.

Sincerely yours,


James B. Loggins
Assistant Federal Public Defender

JBL/sss
Enclosure

0.10-01-00040-1110 Date Filed 07/03/12 Entry Number 44-1 Page 10 of 21
Mr. Loggins,

The assistant attorney General, John Croust came to see me yesterday. as part of our plea agreement I have with him, he is suppose to inform any court of my cooperation. He said he was going to share the extent of my cooperation with you and see how you wanted to use it. I would like you to advise him to appear at court on my behalf. I would also ~~would~~ like him to speak with the probation person doing the pre sentence report ~~if possible. If not my and his plea agreement is null and void.~~ ^{and to state}

I would also like the other letter to go to the judge, solicitor, and probation.

I thought you come discuss, Thank you 6-17-10
report, ~~too late~~ so we respond, John Ham 240615
~~too late~~ don't want it going to judge like that
→

**FEDERAL PUBLIC DEFENDER
DISTRICT OF SOUTH CAROLINA**

Parks N. Small
Federal Public Defender

BB&T Bank Building
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Fax: (843) 667-1355

Reply to: Greenville

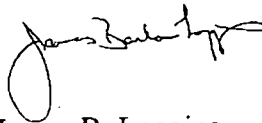
June 22, 2010

Mr. John Forrest Ham, Jr., #240615
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Dear Mr. Ham:

Please find enclosed the addendum to your presentence report. Should you have any questions, feel free to contact me.

Sincerely,



James B. Loggins
Assistant Federal Public Defender

JBL/ss
Enclosure

ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

United States v. John Forrest Ham, Jr., Docket No. 6:10-46

OBJECTIONS

By the Government

Assistant U.S. Attorney Max Cauthen advised the probation officer that there are no objections to the presentence report.

By the Defendant

Defense Counsel James Loggins did not advise the probation officer of any objections to the presentence report.

Respectfully submitted,

Dickie Brunson
Chief U.S. Probation Officer

Roberts F. Wood, Jr.

Roberts F. Wood, Jr.
U. S. Probation Officer

Approved:

Jul 4/12

Ted Ellis Hendrix
Supervising U. S. Probation Officer

Date: June 22, 2010

RFW, Jr. / 34658

Mr. Loggins,
I don't agree with this probation report and there are a couple of other issues I would like to inform the court about. The first is I have a bad drug problem and maybe some mental health issues. In number 20 Burglary I was on L.S.D. and walked up to Willie Lynns door, he said he asked me what I wanted and could tell I was on drugs and said he has told me he had a gun and would shoot me. Then I busted door open. He told me to lay down on porch, which I did, then I got up and went across road, ^{in his view} busted in another house and went inside. The owners said I didn't steal anything and they could tell I didn't go through their stuff. Then walked into Hwy 210 and was struck by a van and walked up a bank and sat there. Police said when they arrived I was as if I couldn't hear or see they were there as if I were dazed. Number 24 I was arrested when police pulled up to me walking down White Horse Rd in handcuffs with 50 grams of Meth. in my pocket. They said I was incoherent and hadn't escaped from anywhere. The people that called the police to Greenville auto collision told me the owner was at having surgery. I said I knew. I had a pistol stuck in front of my pants. Jennifer had her pants on inside out with the pockets pulled out. Is anyone not out of their mind, on drugs or both would of left, but I didn't.

These three incidents should attest to a bad drug problem and Mental health issues. There also was no Bullet in the Barrel of my pistol at any time.

The report says related cases - none. They say I kidnaped ~~the~~ Thomas Williamson. Greenville is pursuing this. I didn't know he was on the van. He said I never looked or spoke to him.

18 Says officer shot taser then I pulled out gun. That's nowhere in incident reports. It was out the whole time I was running cause it would fall out of my pants. It says officers didn't fire because the officer's ^{P93} ~~instead of fire~~ ~~were they in a~~ ~~is it around me the whole time?~~ ~~They didn't~~ ~~lift because I never pointed my gun at them.~~ ~~I don't think I pointed gun at the employee.~~ ~~I was motioning for her to get out of van with~~ ~~gun so I did it was unintentional.~~ ~~so she got out~~ ~~she got on. It says resident was a hostage.~~ ~~didn't know he was on there. It says I was~~ ~~pointing my gun at officers. I wasn't.~~ ~~It says I pointed gun at K-9 and he attacked a~~ ~~second time. That's wrong. He hit me in the back, I~~ ~~fell with gun under me. He never even bit me.~~ ~~Then three officers pressed on my back hitting, kicking~~ ~~and tasing me. He went up and down the~~ ~~inside of my right leg where he cut me with~~

3 were in line of fire. Were they in a circle around me the whole time? They didn't fire because I never pointed gun at them.

#9 I didn't point gun at employee. If I did it was unintentional when I was motioning for her to get out of van. She got out and then I got on. It says resident was a hostage. I didn't know he was on there. It says I was pointing gun at officers. I wasn't.

#10 It says I pointed gun at K-9 and he attacked a second time. He hit me on my back and I fell with gun under me. He didn't ever bite me. As soon as I fell, three officers were on my back hitting and kicking and tasing me. They blacked my eye, swabbed the side of my head. I had cuts up and down the inside of my right thigh where he cut me with the contacts of the taser. I have scars at the middle of thigh from this.

#13 Says I pointed gun at officers and victim. I didn't point gun.

#20 Says I went inside and was confronted. I never went inside.

#21 Says I hit Charlie Jones in back of

U.S. DISTRICT COURT - CIVIL Date Filed 07/09/12 Entry Number 44-1 Page 10 of 21
head. I was in corner and he was up in my face and I hit him in side of head. Bouncers had already got him to get away from me one time trying to start trouble.

#22 Says me and co defendant took money from Gladys Vaughn. I took co defendant to his grandmother's. He came outside and got me. She asked if she could write a check in my name for \$40 because her grandson had no I.D. I said yes. I didn't get none of the money.

#24 Doesn't mention I'm walking down the side of White Horse Rd in handcuffs with 50 grams of meth in my pocket.

#42 Says I pointed gun at police and victim and I ~~ab~~ abducted another victim. I didn't point gun or know guy was in van.

#46 Says abducted person. I didn't.

#63 I must have mental health issues.

#83 or #84 I've asked the assistant attorney General for S.C., John Crout to advise the Court of me purchasing Sled 900 grams of meth, testifying in front of the State Grand Jury, testifying in court on Kim Taylor and 6-28-10 I'm suppose

5 from Salvador Chavez, who is currently in Federal prison. They also got two more pounds of meth at his house. Me testifying in front of the S.C. Statewide Grand Jury, testifying in court on Kim Taylor, and on 6-28-10 I'm suppose to testify on Joel Hall also. all of this has to do with a Statewide Grand jury case called "vanilla ice". I testified on ten or fifteen people and my involvement in a drug conspiracy. This has a lot to do with why I got my current Federal charges and my escape charge in Pickens, because I didn't want to go to prison and face people knowing about my cooperation with this. I got the probation report on 6-14. Mr Loggins is suppose to come see me and we must make a written response about the report by 6-19. I'm writing this letter on Thursday 6-17 to see if Mr. Loggins will mail it to the judge, solicitor and probation, because I want to inform the court of all this.

Thank you
John Ham

11-14-10

Mr Loggins,

I received the letter and transcripts you sent me. When I got sentenced you told me I had I think 14 days to request for you to file an appeal for me, which I did. I'm not sure how the appeal process and you being my Attorney works. are you going to be my attorney when and if I go back in front of the judge on the appeal? Is this appeal the right time for me to bring up issues such as that the third degree burglary shouldn't of been a predicate to make me an armed career criminal? or that my criminal history wasn't within the time line to make me a career offender? Did my indictments go in front of the Grand jury to get true billed, because there is no forepersons signature on my copy. Is this appeal where I should bring up that I requested for a downward departure for the cooperation with Gled? Is this when I ~~should~~ should bring up that I sent you a letter and requested you to send a copy of it to the judge and you didn't, or bring up the issues in that letter such as my drug problem, mental health issues and all the

2

objections I had to the presentence report that are listed in that letter that you didn't object to on the addendum to the report, which I feel would and did affect my sentence because statements in it were false and accusing and assuming things that aren't factual or provable and make me appear more violent and or criminal than I am.

on page 29 of the change of plea, line 14 says that "another penalty for count one" It would of been less considering that the third degree burglary wasnt a predicate offense for armed career criminal or that I didn't have two convictions in the ten year time frame for the career offender status!

Page 29, line 23 that I "intended to cause death of or intended to cause serious bodily harm". That was not the case and or couldn't be proved, so it is wrong. Page ~~33~~ 33, line 13 the distribution of marijuana was dropped or was not a predicate for armed career criminal. I'll have to check which one. Line 14, burglary of a building is not a predicate offense for armed career criminal. Page 34, line 3 thru 8, The gun was brandished, but not pointed at victim. Page 40, lines 15 thru 21 says we would have a right to challenge any facts in ~~the~~ pre sentence report I

3

disagreed with or the advisory guideline. The letter I asked you to mail the judge, then asked you at the sentencing to give to the judge had many objections to both, but you didn't bring any of them up to the judge. Can this be raised in this appeal? Page 42, line 15 what are the "limited circumstances" mentioned here.

on the sentencing transcript page 2, line 6 "there were no objections filed", I asked you to in my letter I had sent you and you didn't, and asked you about it that day and you advised me not to bring it up, so I didn't, when ~~and~~ asked on line 11. Lines 20 thru 23, my offense level, criminal history category are ~~wrong~~ incorrect because of the objections I requested to be made to the presentence report and I shouldn't be classed as "career offender" or "armed career offender", so the guideline range would be wrong. Page 3, lines 4 thru 8, there should of been objections to the findings in the presentence report. Page 4, line 3 should of been an objection to the report, line 4 and 5 is wrong, it's not an accurate reflection. Page 4, line 24 and 25, why didn't you request benefit? I had wrote you about it and asked you about it and asked you to give the judge a letter about it.

4

Page 5, line 20, what is 3553(a) factors? Page 6, line 4, the 235 months should not be right because I'm not a career offender or armed career criminal. I'm not sure what, out of all these issues I've mentioned can be raised or should be raised on the appeal or if they are matters that should be raised at a later date as ineffective assistance of counsel, or if they can be raised on both. Could you please review all the issues in my letter and send me a response as to which ones I can raise in my appeal now, as long as it's not going to affect me raising them on ineffective assistance of counsel later. But if I can raise them on this appeal and on the other I would like to do that. Your help and response will be greatly appreciated. Please let me know how much help and how far you carry thru on the process of this appeal for me.

Thank you

John Ham @

I.D. 20571171

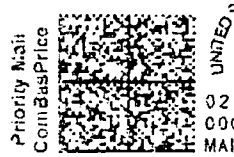
132 cotton Dr

Ovilla Ga. 31774

P.S. Would you please send me a copy of the letter with my objections to the presentence report I have, a rough draft, but I'd like to have an exact copy.

John Ham
375 First ave. East
Hendersonville NC, 28793

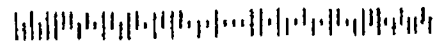
2012 JUL -5 PM 2:20



ITEM X-RAYED
USMS
APB 2/5/11
SK 0011

Clerk, U.S. District Court For Greenville SC
300 E. Washington St.
Greenville SC, 29601

Legal Mail



RECEIVED
2012 JUL -5 P 12:21

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

JOHN FORREST HAM, JR.,	)	CRIMINAL NO: 6:10-46
	)	
Petitioner	)	
	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent	)	

**GOVERNMENT'S RESPONSE TO PETITIONER'S 2255 MOTION AND
GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT**

The Petitioner, John Forrest Ham, Jr., filed a Motion to Vacate, Correct or Modify Sentence pursuant to Title 28, United States Code, § 2255 and is requesting that he be re-sentenced on the basis of ineffective assistance of counsel. The Government opposes Petitioner's request for re-sentencing for the below reasons.

PROCEDURAL HISTORY

On January 12, 2010, Ham was indicted for possession of firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1); carjacking in the presence of another by force, violence and intimidation, in violation of 18 U.S.C. § 2119(1); and possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). On May 12, 2010, the Petitioner pled guilty to possession of firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1); carjacking in the presence of another by force, violence and intimidation,

in violation of 18 U.S.C. § 2119(1); and possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). On August 31, 2010, Petitioner was sentenced to a total term of 319 months of imprisonment, based on 235 months on Count One, 180 months concurrent on Count Two, and 84 months consecutive as to Count Three. The judgment was entered on September 10, 2010. Petitioner sought direct appeal of the sentence and on July 12, 2011, the Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court. Petitioner filed the present Motion on July 5, 2012 within the one year statute of limitations.

ALLEGED GROUNDS FOR RELIEF AND ARGUMENTS

Ham alleges that his counsel was ineffective in approximately 13 ways. In order to prevail in an ineffective assistance of counsel claim, Petitioner has the burden of showing that his counsel's performance fell below an objective standard of reasonableness, and that his counsel's deficiencies prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687-692 (1984). A defendant "must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. The reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690, (emphasis supplied). Further, there is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance...." Id. at 689. As the Strickland Court observed:

It is all too tempting for a defendant to second-guess counsel's assistance after

conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's perspective at the time. *Id.*

Strickland, and the cases following it in the Fourth Circuit, command that the Defendant must meet two requirements or prongs. First, he must show that his counsel's representation, "... fell below an objective standard of reasonableness." Bacon v. Lee, 225 F.3d 470, 478 (4th Cir. 2000); cert. denied 532 U.S. 950 (2001) (quoting Strickland at 688). The Defendant's trial counsel is entitled to a strong presumption that trial strategy and tactics fall, "... within a wide range of reasonable professional assistance." United States v. Roane, 378 F.3d 382, 404 (4th Cir. 2004); cert. denied 546 U.S. 810 (2005) (citing Strickland at 689). For the Defendant's trial counsel's performance to be deficient under this prong, his errors must have been so egregious that he was not, "... functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Roane (citing Strickland at 687). As noted above, the objectiveness of trial counsel's assistance is to be evaluated under a "highly deferential" standard based on trial counsel's perspective at the time of the alleged error and in light of all the circumstances with wide latitude being given to the tactical decisions made by trial counsel. Roane at 404-405 (citing Kimmelman v. Morrison, 477 U.S. 365, 381 (1986); and Strickland at 689).

Second, the Defendant must also establish, "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Bacon, supra at 478 (citing Strickland at 694). In order to do so, the Defendant must show a “probability sufficient to undermine confidence in the outcome.” Roane, supra at 405 (citing Strickland at 694).

Finally, in applying the Strickland standard to challenges of a trial counsel’s effectiveness, the court does not have to consider both prongs if one of them is not satisfied. Roane at 404. With this principle in place, the Government will address the Defendant’s allegations.

Ground One: Failure to Make Objections to Presentence Report

Ham alleges that defense counsel was ineffective because counsel never showed up to go over the pre-sentence report with him. In addition, Petitioner further alleges that counsel did not make the necessary objections to the pre-sentence report and asked Petitioner not to bring this up during sentencing.

On August 31, 2010, Petitioner was sentenced in front of the Honorable Henry Floyd. During sentencing, Petitioner answered in the affirmative when the Court asked whether he has “gone over the presentence report with” his counsel. (Sentencing at p. 2, Lines 7-9) Moreover, Petitioner indicated to the Court that he had no questions about his presentence report (PSR) and he understood what the guideline says. (Sent. Tran. at p. 2, Lines 10-11) Additionally, Petitioner informed the Court he understood the guidelines range. (Sent. Tran. at p. 3, Lines 2-3) When asked by the Court if he had anything to say, the Petitioner replied “No sir.”. (Sent. Tran. at p. 5, Lines 17-18)

Based on the record, it is clear that Counsel for Petitioner did review the PSR with

Petitioner before Court and the Petitioner offered no objections when asked by the Court.

Counsel was not ineffective as alleged by Petitioner on these bases.

**Ground Two: Predicate Offenses Does Not Qualify Him
as an Armed Career Criminal**

Petitioner claims his burglary conviction should have been raised by his counsel as not being a proper predicate of the armed career criminal act (ACCA). A defendant is considered as an armed career criminal (ACC) if he has three prior violent felony and/or serious drug convictions. 18 U.S.C. § 924(e). Burglary is considered as a “violent felony” under 18 U.S.C. § 924(e)(2)(b)(ii).

Petitioner argues that he should not be classified as an armed career criminal pursuant to 18 U.S.C. § 924(e) and U.S.S.G. § 4B1.4 because his predicate burglary offense should be classified as burglary in the third degree as it is classified as such in the State of South Carolina criminal justice system. He argues, therefore, it should not be considered a “violent felony.”

This conviction for burglary in the third degree clearly qualifies as a generic burglary for purposes of § 924(e). See United States v. Hickman, 358 Fed.Appx. 488, 489-90 (4th Cir. 2009) (unpublished) (determining that burglary in the third degree in which defendant entered a building was burglary predicate offense for purposes of ACCA; noting that a District Court can rely upon PSR to determine whether prior burglary third degree qualifies as generic burglary for purposes of the ACCA); United States v. McDaniels, 340 Fed.Appx.. 886, 889 (4th Cir. 2009) (unpublished) (defendant’s prior conviction for burglary in the third

degree qualified as generic burglary predicate offense for purposes of the ACCA because PSR revealed “that the object of McDaniel’s prior burglary was a building”); United States v. Rivers, 310 Fed.Appx. 618, 619-20 (4th Cir. 2009) (unpublished) (burglary in the third degree qualified as generic burglary predicate offense for purposes of the ACCA because indictment revealed that Rivers burglarized a physical structure with a defined street address), appeal after remand, 595 F.3d 558 (4th Cir. 2010) (reversed on other grounds).

According to the PSR, paragraph 21, the 1997 conviction was based on Petitioner’s burglary of a residence. It is irrelevant what the State of South Carolina chose to call it, it was a qualifying burglary. The State of South Carolina’s classification system of burglary in the first, second, or third degrees have no application to the federal sentencing scheme. To qualify as a burglary for ACCA purposes, it must meet those factors as set forth above and based on the nature of the conviction as a burglary and supporting Fourth Circuit case law, it is clear that Petitioner’s conviction is correctly classified as a violent felony. Petitioner does not contest the two other qualifying predicate offenses.

The Petitioner also argued in his pro se Supplemental Brief on appeal that he was not an ACC, nor is he a career offender, that certain convictions received too many points in his PSR, and his offense level was incorrect.

Ground Three: Predicate Offenses Does Not Qualify Him as a Career Offender

Petitioner alleges that his assault and battery of high and aggravated nature (ABHAN) conviction is over ten years old, and thus should not be considered as a predicate offense for career offender purposes.

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1 (a). A “crime of violence” is any offense punishable by more than one year imprisonment. U.S.S.G. § 4B1.2.

According to the presentence report at paragraph 21, Petitioner was convicted and received five years probation on February 10, 2000, however, his probation was revoked for a term of three years and terminated on July 25, 2003. Petitioner correctly receives three criminal history points for that conviction because his sentence of imprisonment exceeded thirteen months. (U.S.S.G. § 4A1.1(a))

This is a countable offense for Petitioner’s designation as a career offender (and qualifies as a predicate for the ACCA) because the probation revocation occurred within the 10 year range of the present offense, thus qualifying it as a predicate offense.

Petitioner’s counsel was not ineffective for not arguing this prior offense did not meet the predicate requirements.

Ground Four: Miscalculations on Presentence Report

According to the presentence report, Petitioner was given two points for an offense on April 27, 2000, and two points for another offense on August 27, 2001, based on sentences of one year each.

According to the United States Sentencing Guidelines (U.S.S.G. § 4A1.1(b)), two

points are allotted to the criminal history for each prior sentence of imprisonment of at least sixty days not counted in 4A1.1(a). Each of the respective convictions correctly received two points (totaling 4) based on their sentences. Likewise, the ABHAN revocation received three points under 4A1.1(a) since the sentence of imprisonment was in excess of thirteen months.

Additionally, Petitioner claims he is not a career offender and therefore paragraph 28 of the PSR was wrong when it gave him a criminal history category of V and his attorney was ineffective for not objecting to these claims.

According to the PSR, and it was not objected to by Petitioner, he has the following qualifying convictions for career offender purposes; ABHAN, 2003 revocation, and trafficking methamphetamine conviction in 2003 (and accompanying PWID methamphetamine conviction). (PSR ¶¶ 21, 24)

Based on the U.S.S.G. § 4B1.1(b), the criminal history category for a career offender shall be VI. Because Petitioner has the predicate qualifying convictions for career offender purposes and the U.S.S.G. mandate a criminal history category of VI, his counsel was not ineffective for not arguing against these applications.

Ground Five: Miscalculations on Presentence Report

Petitioner merely restates his previous arguments from grounds three and four above.

The Government reasserts the PSR correctly applied the appropriate criminal history points based on U.S.S.G §§ 4A, and 4B1.1(b). Counsel was not ineffective for not arguing against the applicable guidelines.

Ground Six: Miscalculations on Presentence Report for Violation of Probation

Petitioner argues that at the time of the current offense, he was not on probation. Petitioner committed the current offense on September 17, 2009, and his probation was revoked on November 13, 2009. (PSR at ¶ 24.) Based on the record from the PSR, it is evident Petitioner was indeed on probation at the time he committed the instant offense. Therefore, based on U.S.S.G. § 4A1.1(d), the two points were correctly added.

Counsel was not ineffective for not arguing against the properly calculated guidelines.

Ground Seven: No Intent for Kidnaping

According to U.S.S.G. § 2B3.1(b)(4)(A), “If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.” In the transcript of Petitioner’s guilty plea as it relates to the carjacking and this enhancement, “. . . as he ran and officers started to chase him in their vehicles he ran to the parking lot of Greenville Community Residence which is a group home for mentally disabled persons. There with one of the residents was bus driver R.P. was in the bus described in the indictment, your honor, waiting to take an individual out of that location. . . . He (Ham) then came back to the bus on the passenger side knocking on the doors telling her to open it, pointing the gun in her direction. . . .Mr. Ham then went to the driver’s side, knocked on the door, pointed the gun at her head told her to open it and get out. . . .He got into the van. She went out the other side of the van fearing for the life and/or safety.” (Sent. Tran. pp. 31-32, Lines 15-4)

Based on the correctly applied guideline, the four point enhancement was proper due to the fact set forth in the record that an innocent third party (passenger) was on the bus when the Petitioner carjacked the bus driver. Petitioner was not charged federally with kidnaping but with carjacking. The enhance was appropriate given the facts and no objection was made in regards to the presence of the passenger at the time of the guilty plea or at sentencing.

Based on the record and the applicable U.S.S.G., Petitioner's counsel was not ineffective for not opposing the enhancement.

Ground Eight: Objections to Base Offense Level of the PSR

Petitioner alleges that counsel was ineffective because Petitioner should not be classified as an armed career criminal and/or a career offender. Petitioner is simply re-asserting arguments previously made in his Petition concerning his criminal history and his classification as a Career Offender/Armed Career Criminal (ACC). Based on his previous convictions for Burglary, ABHAN, Trafficking Methamphetamine, and PWID Methamphetamine, the Petitioner was correctly classified as an ACC and/or a career offender. According to U.S.S.G. § 4B1.4(B)(3)(A), the applicable total offense level for an ACC is 34.

Petitioner is simply wrong when he states that he was incorrectly classified as an ACC or career offender because his prior convictions qualify him as such. Accordingly, the PSR calculation was correct and his counsel was not ineffective in opposing such classification(s).

Ground Nine: Firearm Statute

The Petitioner argues that due to the language set forth in 18 U.S.C. § 924(c), regarding “a greater minimum sentence provide by this subsection or any other provision of law” the eighty-four months sentence for 924(c) should not apply. (Petrn, p.10b)

This argument is without merit. Petitioner’s classification as a Career Offender resulted in his statutory mandatory minimum sentence of 188 months as to count one and eighty-four months minimum, consecutive as to count three for the 924(c) violation. (18 U.S.C. § 924(c)(1)(A)(ii)) and U.S.S.G. § 4B1.1(b) 188 to 235 months plus 84 months totals 272-319 months) (See PSR ¶ 58.)

Petitioner misinterprets 18 U.S.C. § 924(c) wherein it states “. . . To the extent a greater minimum sentence is otherwise provided by this subsection or any other provision of law . . .” The Petitioner received the minimum sentence he could have received for the violation as set forth in 924(c)(1)(A)(ii).

Accordingly, his counsel was not ineffective for not arguing against correctly calculated guidelines and statutory penalties.

Ground Ten: Objections to Guideline Range

Petitioner reasserts his previous arguments one through nine to culminate in his claim that his resulting guidelines range was incorrect. This argument is completely without merit based on the record in this case and the PSR.

In addition to the Government’s arguments as set forth in one through nine above, the calculations incorporating his prior convictions resulting in his classification as a career

offender and the U.S.S.G. enhancements were properly applied. According to the U.S.S.G. § 4B1.1(b), the proper range was 188 to 235 months plus 84 months, totaling 272-319 months. (See PSR ¶ 58.)

At the time of his guilty plea, the Court was informed of the Petitioner's prior ACC, career offender predicate convictions and the Petitioner did not object. (Plea Tran. at p. 33, Lines 12-18)

At sentencing, the Court informed Petitioner of the guideline's calculation resulting in a total offense level of 31, a criminal history category of VI, his designation as a career offender and an ACC with a resulting range 188-235 months plus 84 months. Petitioner did not object to the guidelines range or classifications. (Sent. Tran, pp. 3-4, Lines 20-6)

Counsel was not ineffective for not opposing the correctly calculated guidelines in light of the Petitioner's prior record, current offenses, statutory penalties, and guidelines enhancements.

Ground Eleven: Failure to Raise Specific Issues on Appeal

Petitioner argues that defense counsel failed to bring certain issues on appeal after sentencing. It is unclear what those specific issues were, however, counsel filed an appeal and an Anders brief in relation thereto. Petitioner also filed a Pro Se Supplemental Brief. Counsel is in the best position to determine what ground, if any, existed to advance on appeal. In the present case, an appeal was filed and an Anders brief on behalf of Petitioner based on his counsel's opinion of the arguments to advance.

Counsel was not ineffective for not advancing frivolous or baseless arguments on

appeal.

Ground Twelve: Mental Health Issues

Petitioner alleges that counsel was ineffective because he did not raise Petitioner's mental health as an issue to the Court. The Court asked Petitioner whether he has "ever been treated for abuse of alcohol, drugs or mental illness" and Petitioner indicated that he was only treated for drug related issues 15 years ago. (Plea Tran. pp. 7-8, Lines 15-11). Petitioner presents no evidence to support his claim that he has mental health issues. As a matter of fact, defense counsel agreed that there was no issue regarding competency and the Court found that Petitioner appeared to be competent for purposes of entering his guilty plea that day. (Plea Tran. p. 8, Lines 7-11) .

There is no basis, not even a scintilla of evidence to show that counsel was ineffective in this regard to Petitioner's claim.

Ground Thirteen: Guilty Plea

Petitioner claims that he received ineffective assistance of counsel in relation to his guilty plea. Specifically, Petitioner argues that defense counsel pressured him into a guilty plea by assuring that his federal and state imprisonment would run concurrently.

It is crucial for the Court to review counsel's affidavit to determine this claim. Upon examination by the Government, it is evident that counsel did everything possible to try and obtain concurrent sentences as to state and federal prison sentences that he could have done. The affidavit details that guilt was never an issue with the Petitioner but that his aim was to minimize his period of imprisonment with state and federal sentences. Counsel for Petitioner

successfully obtained the assistance of local, state, and federal authorities in his herculean effort to try and obtain concurrent state and federal sentences. As set forth in counsel's affidavit, the Bureau of Prisons is apparently the linchpin that concluded the state and federal sentences could not run together in a federal facility.

According to counsel's affidavit on page 2, paragraph 6, they concluded that Petitioner had not, despite counsel's best efforts, been in federal custody when he received his federal sentence.

It is vital to note counsel's effort to address and rectify the sentencing issue. In paragraph 7, of his affidavit, counsel states, in relevant part, that he **notified Petitioner how the state and federal concurrent sentencing issue could be addressed and resolved in Petitioner's favor**, but that Petitioner chose not to be re-sentenced. Petitioner thereby chose to accept his current sentence. (Emphasis added)

Counsel for Petitioner was prepared to have Petitioner re-sentenced as detailed in paragraph 7 of his affidavit, but the Petitioner elected not to do so.

The issue of concurrent or consecutive state/federal sentences was of concern to the Petitioner and his counsel made a tremendous effort to achieve concurrent results. But for the BOP determination that Petitioner was not in federal custody at the time of his federal sentencing it would have been achieved. The consecutive state/federal sentences were not the result of ineffectiveness by his counsel.

Ultimately, despite continued efforts by his counsel to address the consecutive state/federal sentences, it was the Petitioner who decided not to accept a viable remedy of

being re-sentenced federally. The Petitioner has not shown in any manner how his counsel was ineffective in this regard.

In reference to Petitioner's plea of guilty, a guilty plea must be "a voluntary and intelligent choice among the alternative courses open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). However, a recommendation by counsel to a defendant to plead guilty is not unreasonable in light of the strength of the Government's case. "If an attorney determines, in his professional judgment, that a guilty plea is in his client's best interest, the plea will not be set aside on the ground that such advice amounted to coercion by the attorney." Jones v. Wainwright, 604 F.2d 414, 416 (5th Cir. 1979). In deciding whether a guilty plea is constitutionally valid, the court must consider: whether the guilty plea represents a voluntary and intelligent choice among the alternative courses of action open to a defendant. In applying this standard, courts look to the totality of the circumstances surrounding the guilty plea and grant the defendant's declaration of guilt a presumption of truthfulness. Walton v. Angelone, 321 F.3d 442, 462 (4th Cir. 2003).

The record in this case reveals that the District Court conducted a detailed plea colloquy with Petitioner to ensure his plea was made knowingly, intelligently, and voluntarily. (Plea Tran. pp. 3-49 Lines 10-19). Before Petitioner pled guilty, the Court questioned him extensively on his competence and ruled him competent to plead guilty. Id. at 7-8. The Court questioned him about the quality of his legal representation. Id. at 8-9. Petitioner answered that his lawyer had done everything he had asked him to do, Id. at 9, that there was nothing else that he wanted his lawyer to do, Id. at 10.

The Court explained the charges against, elements, and the possible penalties to the Petitioner. Id. at 27-31. The Court questioned him extensively on whether he understood the consequences of his guilty plea, including the rights he would be giving up by pleading guilty. Id. at 10-17. After the Court discussed his rights, Petitioner stated that he still wanted to plead guilty. Id. at 17-18. The record clearly shows that Petitioner chose to enter the plea agreement, knowingly, voluntarily, and intelligently. Id. at 49. The Court also informed and question Petitioner about how the sentence actually imposed might be different from any estimate his counsel or anyone else may have given him. Id. at 41. The Court was also informed that there was no plea agreement in this case. Id. at 44

In order to prevail on a claim for ineffective assistance of counsel, Anderson must show that counsel's performance fell below an objective standard of reasonableness, and that counsel's deficiencies prejudiced his defense. See Strickland v. Washington, 466 U.S. 668, 687-692 (1984). Petitioner must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different Id. at 694. The reviewing court must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct. Id. at 690. Further, there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . . the reviewing court should be highly deferential in scrutinizing counsel's performance, and should screen from its analysis the distorting effects of hindsight. Id. at 688-89.

As to the prejudice prong, Petitioner has the burden to prove that the alleged

deficiencies were in fact prejudicial to the outcome of the proceeding. It is not enough to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding. Id. at 693. When challenging a conviction entered after a guilty plea, the defendant must show that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Hooper v. Garraghty, 845 F.2d 471 (4th Cir. 1988).

With regard to his multiple bases of ineffective assistance of counsel, Petitioner fails to prove either of the two prongs required for an ineffective assistance of counsel claim. In not one of his ineffective counsel claims has Petitioner shown that his counsel's performance fell below an objective standard of reasonableness, or that counsel's deficiencies prejudiced his defense. See Strickland, 466 U.S. at 687-692.

CONCLUSION

For all of the stated reasons, the United States requests that Petitioner's Motion be denied as there is no genuine issue of material fact in dispute.

Respectfully submitted,

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: s/ Max Cauthen
MAX B. CAUTHEN, III
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October 1, 2012

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA	)	CR. NO. 6:10-46
	)	
-v-	)	
	)	AFFIDAVIT OF JAMES B. LOGGINS
JOHN FOREST HAM JR.	)	
	)	

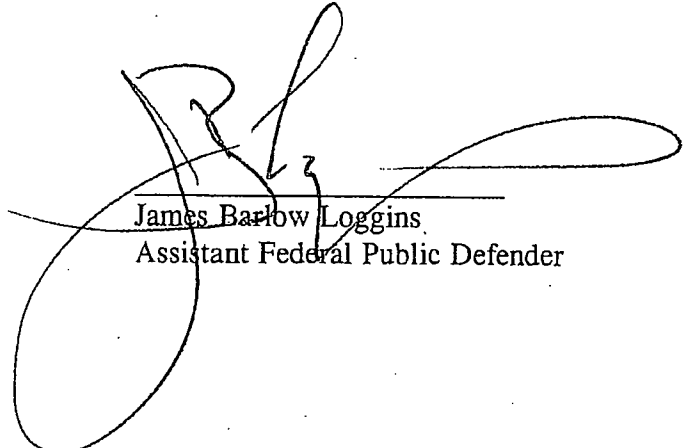
When I was appointed to represent Mr. Ham he was serving a sentence for a state parole violation. He was under indictment in 13th Circuit and also had charges brought by the state grand jury. These charges included Kidnaping, Assault and Battery with Intent to Kill, Possession and Distribution of Methamphetamine, Failure to Stop for a Blue Light, Resisting Arrest with a Deadly Weapon, Pointing and Presenting a Firearm. Mr Ham later pled guilty in Federal Court to Felon in Possession of a Firearm, Carjacking, Use of a Firearm During a Crime of Violence.

The question of guilt was never at issue. The only goals were to try and avoid Mr. Ham dying in prison (receive concurrent sentences) and to try and arrange for him to serve his time in a federal prison. In order to accomplish this it was necessary to get Mr. Ham in federal custody prior to him being sentenced in federal court and for him to have not been sentenced in state court prior to his federal sentence. To this end; with the help of his state attorneys and an Assistant State Attorney General, The South Carolina Department of Probation and Parole and several state court judges a Federal District Judge, and an Assistant United States Attorney the following was done:

1. Ham plead guilty to his state charges but was we arranged for him not tp be sentenced on those charges prior to him coming into Federal Custody;
2. The South Carolina Department of Probation and Parole (SCDPP) terminated his sentence for the parole violation which opened to door for him to come into federal custody;

3. On August 27, 2010 Judge Robin B. Stilwell signed an order releasing Ham to Federal custody. Prior to this Order being issued I submitted to proposed Order to the U.S. Marshall to make sure that it would put Ham in federal custody. I was informed that the Bureau of Prisons had approved the Order. After BOP approval it was submitted to and signed by the state judge and Ham was released to federal custody;
4. On August 31, 2010 Ham, now in federal custody with no active state sentences, was sentenced in federal court to a total term of 319 months or 26.5 years. As he was in federal custody with no state sentences to which the federal sentence could run either consecutively or concurrently those issues were not addressed. Had there been an active state sentence we would have requested and the court would have granted a request that the federal sentence be ordered to begin that day and that he begin serving his sentence in the state system.
5. On August 31, 2010 a writ was signed releasing Ham to State Custody. On September 1, 2010 Ham was sentenced in Pickens County to a total term of 25 years to run concurrently with his active federal sentence. Ham was then returned to federal custody awaiting assignment to a federal prison. He had received exactly the sentences he bargained for and was going to be able to serve his time in a federal prison.
6. Prior to his assignment to a federal facility the BOP informed the US Marshall that, the Oder that they had approved on August 27, 2010, did not in fact transfer Ham to the federal custody and that since he had been in state custody when he received his federal sentence they would not accept him in the BOP until he has satisfied all of his state sentences. This doubled Ham's total sentence to over 51 years.
7. After receiving his federal sentence Ham filed an appeal and jurisdiction of the case was transferred to the appellate court. Ham was informed that I had explained his situation to the federal judge and that the judge was willing to re-sentence Ham and to order that the federal sentence begin the date of the original federal sentence and that he begin serving his sentence in the state system. It was explained to Ham that to accomplish this it would be necessary to dismiss his direct appeal and return jurisdiction to the district court. It was also explained that he could file a new appeal after receiving his new sentence. Ham chose not to be re-sentenced and elected for his sentence to remain at over 51 years.

8. The destruction of all of this hard work was when the BOP decided that the previously BOP approved order did not transfer custody of Ham to the federal government. This appears to be a monetary decision. At current cost the BOP saved over \$500,000.00 when they refused to take Ham.
9. Ham made all decisions based upon his desire to receive concurrent sentences and to serve his time in a federal facility. This was accomplished until the BOP reversed their position.



James Barlow Loggins
Assistant Federal Public Defender

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

JOHN FORREST HAM, JR.,	)	CRIMINAL NO: 6:10-46
Petitioner	)	
	)	
vs.	)	
	)	<u>CERTIFICATE OF SERVICE</u>
UNITED STATES OF AMERICA,	)	
Respondent	)	

The undersigned hereby certifies that he, as attorney of record, has caused an employee in the Office of the United States Attorney for the District of South Carolina, on October 1, 2012, to serve a copy of the attached **GOVERNMENT'S ANSWER TO THE MOVANT'S MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE AND MOTION FOR SUMMARY JUDGMENT** on the following person(s):

John Forrest Ham, Jr.
SCDC No. 00240615
Henderson County Detention Center
375 First Avenue East
Henderson, NC 28792

s/Max Cauthen
Max B. Cauthen, III
Assistant United States Attorney

October 1, 2012

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America,

Cr. No. 6:10-46-TMC

v.

OPINION & ORDER

John Forrest Ham, Jr.,

Movant.

This matter is before the court on John Forrest Ham's ("Ham's") Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 44) and the Government's Motion for Summary Judgment (ECF No. 61). For the reasons set forth below, the Government's motion is granted.

I. Procedural History

On May 12, 2010, Ham pled guilty to possession of a firearm by a convicted felon, in violation of 21 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e) (Count One); carjacking, in violation of 18 U.S.C. 2119(1) (Count Two); and possession of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924 (c)(1) (Count Three). On September 10, 2010, Ham was sentenced by United States District Judge Henry F. Floyd to a total of 319 months: 235 months for Count One, 180 months for Count Two, to run concurrently, and 84 months for Count Three, to run consecutively. Ham appealed and on July 12, 2011, the Fourth Circuit Court of Appeals affirmed Ham's convictions and sentences. Thereafter, Ham filed the instant § 2255 motion. In response, the Government filed a Motion for Summary Judgment.

II. Standard of Review

To obtain relief on a motion under 28 U.S.C. § 2255, the movant must prove that one

of the following occurred: (1) his sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose such a sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). Thus, a movant must establish either an error of “constitutional or jurisdictional magnitude” or an error which “could not have been raised on direct appeal, and if condoned, would result in a complete miscarriage of justice.” *Hill v. United States*, 368 U.S. 424, 428 (1962). However, if a movant does not raise a claim on direct review, he may not raise it for the first time on collateral review unless the movant can show (1) cause and actual prejudice or (2) actual innocence. *Bousley v. United States*, 523 U.S. 614, 621–22, (1998). If the movant cannot satisfy the cause and prejudice analysis, movant may be excused from default if the case falls “within ‘the narrow class of cases . . . implicating a fundamental miscarriage of justice.’” *Schlup v. Delo*, 513 U.S. 298, 314–15 (1995). To do so the movant must establish through new evidence “that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.” *Id.* at 327.

In order to prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) that his counsel's performance fell below an objective standard of reasonableness, and (2) that his counsel's deficiencies prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). With respect to the first prong, there is “a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689. With respect to the second prong, a petitioner must demonstrate a “reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Under § 2255(b), a movant is to be granted an evidentiary hearing on his motion

“[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” Summary dismissal of § 2255 allegations is “warranted only if a habeas petitioner’s allegations when viewed against the record of the plea hearing are palpably incredible or patently frivolous or false.” *United States v. White*, 366 F.3d 291, 297 (4th Cir.2004) (quoting *Blackledge v. Allison*, 431 U.S. 63, 76 (1977)) (internal quotation marks omitted).

III. Discussion

In his § 2255 motion, Ham raises thirteen grounds for relief based upon allegations of ineffective assistance of counsel.

Ground One: Failure to Make Objections to Presentence Report

Ham alleges that defense counsel was ineffective because counsel never went over the pre-sentence report (“PSR”) with him and did not file any objections to the PSR. Ham’s general allegations against his counsel do not meet the *Strickland* standard to show either deficient performance by counsel or prejudice. Further, during Ham’s sentencing hearing, upon inquiry from the presiding judge, Ham stated that he had reviewed the PSR with his attorney and had no questions or concerns concerning the PSR. (ECF No. 38 at 2). Accordingly, this ground is without merit.

Ground Two: Predicate Offenses Does Not Qualify Him as an Armed Career Criminal

Ham claims that defense counsel was ineffective for failing to argue that Ham’s burglary conviction was not a proper predicate under the Armed Career Criminal Act (“ACCA”). Specifically, Ham contends that the PSR stated Ham had committed a prior burglary offense and this prior offense was for a third degree burglary of a building which he alleges is not a proper predicate under the ACCA.

A defendant is considered as an armed career criminal (“ACC”) if he has three prior violent felony and/or serious drug convictions. 18 U.S.C. § 924(e). The ACCA defines “violent felony” as follows:

[T]he term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that -

(I) has as an element the use, attempted use, or threatened use of physical force against the person of another: or

(ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise involves the conduct that presents a serious potential risk of physical injury to another . . .

18 U.S.C. § 924 (e)(2)(B). Burglary is considered a violent felony under 18 U.S.C. § 924(e)(2)(b)(ii). However, burglary is not defined in the ACCA. Under South Carolina law, a person is guilty of third degree burglary “if the person enters a building without consent and with intent to commit a crime therein.” S.C. Code Ann. § 16-11-313.

To determine whether an offense under state law falls within the definition of a violent felony, generally this court uses a categorical approach, which “requires the trial court to look only to the fact of conviction and the statutory definition of the prior offense.” See *Taylor v. United States*, 495 U.S. 575, 598-602 (1990). While a court normally may look only to the fact of a conviction and the statutory definition, because some states broadly define burglary to include places other than buildings, the categorical approach may be modified to “permit the sentencing court to go beyond the mere fact of conviction.” *Taylor*, 495 U.S. at 602. See also *Shepard v. United States*, 544 U.S. 13, 16-17 (2005).

Under the modified categorical approach set forth in *Taylor*, an offense will constitute burglary if the jury was required “to find all the elements of generic burglary in order to convict the defendant,” and “the indictment or information and jury instructions show that the

defendant was charged only with a burglary of a building,” so “the jury necessarily has to find an entry of a building to convict.” *Taylor*, 495 U.S. 602.¹ Moreover, the court “may rely on a prepared presentence investigations report (“PSR”) to determine whether a prior crime qualifies as a predicate offense under the ACCA.” *United States v. Hickman*, 358 F.App’x 488, 489 (4th Cir. 2009)(unpublished).

Ham’s first qualifying predicate offense is his state conviction for burglary in the third degree. According to paragraph 20 of the PSR, Ham’s state burglary conviction was committed when Ham forced open the front door of Willie Lynn’s residence and entered the residence. (ECF No. 22 - PSR at ¶ 20). Because the PSR reveals that Ham’s conviction for burglary in the third degree involved his entry into a residence with force, this offense constitutes a generic burglary for purposes of the ACCA. See *Cade v. United States*, 2012 WL 3116021 (D.S.C. 2012). In addition, because S.C. Code Ann. § 16-11-313 requires an unlawful entry into a building with the separate intent to commit a crime, “it corresponds ‘in substance’ to *Taylor*’s generic definition of burglary.” *United States v. Bonilla*, 687 F.3d 188, 193 (4th Cir. 2012). Therefore, there was no basis for Ham’s defense counsel to object, and

¹Subsequently, in *Johnson v. United States*, ___ U.S. ___, 130 S.Ct. 1265, 176 L.E.2d 1 (2010), the United States Supreme Court held:

When the law under which the defendant has been convicted contains statutory phrases that cover several different generic crimes, some of which require violent force and some of which do not, the “ ‘modified categorical approach’ ” that we have approved [] permits a court to determine which statutory phrase was the basis for the conviction by consulting the trial record - including charging documents, plea agreements, transcripts of plea colloquies, findings of fact and conclusions of law from a bench trial, and jury instructions and verdict forms.

Id. at 1273 (citations omitted). The *Johnson* opinion, however, is inapplicable to this case. In *Johnson*, the Supreme Court addressed a Florida state conviction for battery, not burglary, and the Court specifically noted that burglary was a predicate offense under the ACCA because burglary often leads to violence.

Ham is unable to demonstrate prejudice as a result of his counsel's failure to object. Accordingly, this claim is without merit.

Ground Three: Predicate Offenses Does Not Qualify Him as a Career Offender

Ham alleges that his defense counsel was ineffective for failing to object to a ten-year-old assault and battery of high and aggravated nature ("ABHAN") conviction being considered a predicate offense for his career offender status.

The three-prong test for career offender status is set forth in United States Sentencing Guidelines § 4B1.1:

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

Pursuant to the PSR, Ham was convicted of ABHAN and sentenced to five years probation on February 10, 2000. However, on July 25, 2003, Ham's probation was revoked and a three year sentence was imposed. Ham's sentence of imprisonment on the ABHAN conviction thus exceeded thirteen months, and correctly was treated as a predicate offense for career offender status. U.S.S.G. § 4A1.1(a). Therefore, counsel was not deficient for failing to object, and Ham is unable to demonstrate prejudice as a result of his counsel's failure to object. Accordingly, this claim is without merit.

Ground Four: Miscalculations on Presentence Report

Ham contends defense counsel was ineffective for failing to object to miscalculations in the PSR. As the PSR indicates, on January 7, 2002, Ham was sentenced for the two convictions listed in paragraphs 22 and 23. Ham contends that he was incorrectly given two points in the PSR for each of these offenses when there was no intervening arrest.

U.S.S.G § 4A1.2(a)(2) states:

Prior sentences always are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense.). If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day.

Here, while Ham was sentenced on the same day for the convictions listed in paragraphs 22 and 23, the second part of the rule is only applicable if there is no intervening arrest. As the PSR indicates, Ham committed the charge set forth in paragraph 22 on March 23, 2000, and he was arrested on this charge on April 27, 2000. Ham committed the offense set forth in paragraph 23 on August 27, 2001, and he was arrested for that crime on the same date - August 27, 2001. As he was arrested for the first offense prior to committing the second offense, there was an intervening arrest, and Ham's prior sentences should be counted separately. Therefore, because the PSR properly counted them as separate convictions for the purpose of determining Ham's career offender status, defense counsel was not deficient for failing to object, and Ham is unable to demonstrate prejudice as a result of counsel's failure to object. Accordingly, this claim is without merit.

Ground Five: Miscalculations on Presentence Report

Ham argues that defense counsel was ineffective for failing to object to the criminal history calculation in his PSR. In this ground, he merely re-states his arguments raised in Grounds Three and Four. Accordingly, this ground is without merit.

Ground Six: Miscalculations on Presentence Report for Violation of Probation

Ham argues that defense counsel was ineffective for failing to object to a misstatement in the PSR that he was on probation when the instant offense was committed. Ham contends that at the time of the current offense, he was not on probation. Specifically,

he states his probation expired in December 2008. According to the PSR, Ham was released from the South Carolina Department of Corrections to probation on June 29, 2007, and that Ham committed the current offense on September 17, 2009, and his probation was revoked on November 13, 2009. (ECF No. 22 - PSR at ¶ 24.)

Here, Ham has come forward only with the barest of allegations, all of which are unsupported. In regard to this ground, he has not produced any evidence that defense counsel was deficient in his representation, let alone shown that he was prejudiced. Unsupported, conclusory allegations do not entitle a habeas petitioner to an evidentiary hearing. See *Nickerson v. Lee*, 971 F.2d 1125, 1136 (4th Cir. 1992) (holding in order to obtain an evidentiary hearing a habeas petitioner must come forward with some evidence that the claim might have merit), abrog'n on other grounds recog'd, *Yeatts v. Angelone*, 166 F.3d 255 (4th Cir. 1999). See also *Spencer v. Murray*, 18 F.3d 229, 233 (4th Cir. 1994)(petitioner bears the burden of affirmatively showing deficient performance). Accordingly, this ground is without merit.

Ground Seven: No Intent for Kidnaping

Ham contends that his defense counsel was ineffective for failing to inform him that if he did not know there was a person in the vehicle, he did not have the "mens rea," or intent, required for kidnapping. Therefore, he contends that the four-level enhancement provided for in paragraph 46 of the PSR is incorrect.

According to U.S.S.G. § 2B3.1(b)(4)(A), "If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels." At Ham's guilty plea, the Government set forth its rendition of the facts:

[Ham] ran and officers started to chase him in their vehicles he ran to the parking lot of Greenville Community Residence which is a group for (sic) home for mentally disabled persons. There with one of the residents was bus driver R.P. (sic) was in the bus described in the indictment, your honor, waiting to take an individual out of that location. Mr. Ham first of all ran past the bus into some nearby woods while armed with a weapon.

He then came back to the bus on the passenger side knocking on the doors telling her to open it, pointing the gun in her direction. She did not do so. Mr. Ham then went to the driver's side, knocked on the door, pointed the gun at her and told her to open it and get out. He pointed the gun at the direction of her head. He got into the van. She went out the other side of the van fearing for her life and/or safety.

At that point in time Mr. Ham then took the bus – got in the driver's seat, took the bus and started to drive off. . . .

As he drove off, your Honor, officers who were nearby shot at least one, if not more of the tires located on the bus. They followed him a short distance and then were able to force him to pull the bus over. He then got out of the driver's seat, went out the door -- passenger side door of the bus and started to run up a hill there.

Officers on the scene released a K-9 officer that they had with them. That K-9 stopped Mr. Ham as he went up the hill, held him until officers themselves got up the hill and took custody of him, took the K-9 off of him. As they picked him up he was found to have a loaded firearm underneath him. . .

(ECF No. 37 - Guilty Plea Tr. at 31-32).

The PSR provided that:

9. The male subject then ran behind the Greenville Community Residence Center. This is a facility for special needs people and assisted living. An employee of the center was sitting in a bus in the parking lot waiting on one of the residents to get on the bus to go to a daycare facility. The male subject came back around the building just as the resident got on the bus. The male subject attempted to open the bus door and get on, but the employee had locked the door. The male subject ran around the front of the bus to the driver's side door and pointed his gun at the employee and demanded that the door be opened. Fearing for their life, the employee opened the door. The male subject got in and ordered the employee out. The employee left out the passenger side door. The male subject then began driving the bus out of the parking lot with the resident inside as a hostage. The male subject drove straight towards some officers while pointing his gun at the officers. The officers shot at the male subject and the tires on the bus several times. The male subject was able to exit the parking lot and drove towards I-85.

10. Officers pursued and as the bus entered the on ramp to I-85, they noticed that the bus had a flat tire. After the bus entered onto I-85, it began to slow down and came to a stop on the side of the road. The male subject exited the bus and began to run up the embankment in an attempt to escape. A K-9 was released and knocked the male subject to the ground. As the K-9 officer approached the male subject, the male subject rolled over and pointed his gun at the officer. The K-9 again attacked the male subject causing him to drop the gun. Multiple other officers arrived and attempted to restrain the male subject. Officers eventually tased the male subject several times and physically struggled with him before he was finally handcuffed. After being arrested, it was discovered that the male subject was named John Forrest Ham, Jr. and he had a long history of criminal activity.

...

46. Specific Offense Characteristics: As noted in the offense conduct, a person was abducted in the defendant's escape attempt. Pursuant to U.S.S.G. § 2B3.1(b)(4)(A), the offense level is increased by 4.

(ECF No. 22 - PSR at 5, 12).

Ham contends that he did not know the passenger was on the bus and, therefore, did not have the intent to abduct the passenger in the bus. The court need not determine whether intent must be shown for the application of this enhancement because even if this Court were to conclude that Ham's sentence was inappropriately enhanced as to Count Two and counsel was deficient for failing to object, given Ham's career offender status, Ham cannot show prejudice. Because Ham's offense level of 28 was lower than the offense level of 38 under the career offender provision, the higher level applied and the court relied on Ham's career offender status in sentencing him. Non-prejudicial sentencing errors do not warrant § 2255 relief. See *United States v. White*, 238 F.3d 537, 542 (4th Cir. 2001). See also *United States v. Abdel-Aziz*, 67 Fed.Appx. 805 (4th Cir. 2003)(Alleged error with respect to verbal sentence of imprisonment with regard to particular count was harmless, since defendant did not contest validity of adjudication as to that count and because 60 month sentence on that count was to run concurrently with 100 month sentence imposed

on other counts). Accordingly, this ground is without merit.

Ground Eight: Objections to Base Offense Level of the PSR

Ham alleges that his defense counsel was ineffective for failing to object to Ham being classified as an armed career criminal and/or a career offender. First, in this ground, Ham simply reasserts generally his previous arguments concerning his criminal history and his classification as a ACC. Moreover, Ham's allegations are general and conclusory, and because he has not alleged any specific deficient performance and prejudice, do not meet the *Strickland* standard. Accordingly, this ground is without merit.

Ground Nine: Firearm Statute

Ham contends his defense counsel was ineffective for failing to object to the mandatory minimum sentence of 84 months that he received on Count Three for use of a firearm during a crime of violence in violation of 18 U.S.C. § 924(c). Subsection 924 (c) provides for punishment of a violation of § 924 and states that “except to the extent that a greater minimum sentence provided by this subsection or any other provision of law.” Specifically, Ham contends that the “except” clause nullifies § 924 (c)(1)(A)'s mandatory minimum sentence requirements because his Count One conviction carries a “greater minimum sentence,” fifteen years, than the seven-year mandatory minimum sentence for his Count Three or § 924 (c) conviction.

Ham's claim is foreclosed by *Abbott v. United States*, ___ U.S. ___, 131 S.Ct. 18, 23, 178 L.Ed.2d 348 (2010)(holding that a defendant who is subject to a mandatory consecutive sentence under § 924 (c) is not spared from that sentence by virtue of receiving a higher mandatory sentence on a different conviction). *See also United States v. Studfin*, 240 F.3d 415 (4th Cir. 2001) (holding that the “except” clause applies only to provisions applying a greater minimum sentence to the § 924 (c) violation itself). Therefore, based on the record,

defense counsel was not deficient for not objecting to the mandatory sentence and Ham is unable to demonstrate any prejudice. Accordingly, this claim is without merit.

Ground Ten: Objections to Guideline Range

Ham contends his defense counsel was ineffective for failing to object to paragraph 58 of the PSR “because of grounds # 2 thru # 9 that [he has] presented to [defense counsel] and [is] now presenting to this Court.” (ECF NO. 44 - Habeas Pet. at 11). In this ground, Ham is simply reasserting his previous arguments that his resulting guidelines range was incorrect. Accordingly, this ground is without merit.

Ground Eleven: Failure to Raise Specific Issues on Appeal

Ham contends his defense counsel was ineffective for failing to raise certain issues on appeal after sentencing and respond to his inquiries about issues Ham asked defense counsel to raise on appeal. Ham’s allegations against his counsel are general and, because he has not alleged any specific deficient performance and prejudice, do not meet the *Strickland* standard. Accordingly, this ground is without merit.

Ground Twelve: Mental Health Issues

Ham contends his defense counsel was ineffective for failing to raise his mental health and raise this issue to the court. He contends he raised his mental issues to defense counsel prior to his sentencing. Moreover, at his guilty plea, when the court asked Ham whether he has “ever been treated for abuse of alcohol, drugs or mental illness” and Ham indicated that he was only treated for drug related issues 15 years ago. (ECF No. 37 - Guilty Plea Tr. at 7-8). Ham presents no evidence to support his claim. Accordingly, this claim is without merit.

Ground Thirteen: Guilty Plea

Ham contends his defense counsel was ineffective because he pressured him into

pleading guilty by guaranteeing him that his federal prison sentence would run concurrently with his state prison sentences.

The Bureau of Prisons (“BOP”) apparently concluded that Ham could not serve his state and federal sentences concurrently while in a federal facility because the BOP determined that Ham was not in federal custody when he was sentenced in federal court.² In his affidavit, defense counsel states that he had explained the situation to the sentencing judge and the judge was willing to re-sentence Ham, which would have allowed Ham to serve his sentences concurrently. (ECF No. 55 - Aff. of James Loggins § 7). Ham, however, had to first dismiss his pending direct appeal. *Id.* Defense counsel attests Ham, however, chose not to be re-sentenced. *Id.* Ham has not responded to the government’s motion for summary judgment or defense counsel’s affidavit.

The court also notes that during Ham’s sentencing hearing, the court informed Ham that the sentence actually imposed might be different from any estimate his counsel or anyone else may have given him (ECF NO. 38 at 41). The court was also informed that there was no plea agreement in the case. *Id.*

Based on the record before the court, defense counsel was not deficient in advising Ham to plead guilty. Defense counsel attempted to have the sentences run concurrently and reasonably believed Ham was sentenced while in federal custody. Moreover, defense counsel also attempted to address the situation when later faced with the BOP’s determination that Ham had not been sentenced while in federal custody. Ham’s failure to withdraw his appeal and be re-sentenced was his decision and does not render counsel’s

²While the BOP later determined Ham was not in federal custody, it is apparent from the sentencing hearing transcript that defense counsel had gone to considerable lengths in an effort to have Ham taken out of state custody and placed into federal custody for the sentencing. (ECF No. 38 at 4).

performance deficient. Accordingly, this claim is without merit.

IV. Conclusion

For the foregoing reasons, the government's Summary Judgment Motion is granted (ECF No. 61) is **GRANTED** and this Petitioner's Motion to Vacate, Set Aside, or Correct his Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 44) is **DISMISSED**.

A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Rose v. Lee*, 252 F.3d 676,683 (4th Cir. 2001). In the instant matter, the court finds that Petitioner has failed to make "a substantial showing of the denial of a constitutional right." Accordingly, the court declines to issue a certificate of appealability.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

August 9, 2013
Anderson, South Carolina

UNITED STATES DISTRICT COURT

for the

District of South Carolina

John Forrest Ham, Jr.

Petitioner

v.

United States of America

Respondent

Civil Action No. 6:10cr46

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one*):

☒ other: that petitioner's 2255 Motion is dismissed and the government's Summary Judgment Motion is granted.

This action was (*check one*):

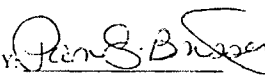
☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☒ decided by the Honorable Timothy M Cain

Date: August 9, 2013

CLERK OF COURT

BY: 
Deputy Clerk

Signature of Clerk or Deputy Clerk

CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	04/11/13
OMCOMITA	RELEASE DATE SCREEN	C023981
SCDC# > 240615		LOC: KIRKLAND
HAM JR, JOHN FORREST	SCDC CLASSIFICATION... VIOLENT	
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY... Y	
	SEXUAL PREDATOR... NOT APP	
	DNA STATUS..... COMPLETED	
	GPS REQUIREMENT... N	
	PREA DECISION.....	
CURRENT SENTENCE: 025-00-000	CONSECUTIVE SENTENCE ... Y	
025-00-000	CURRENT SENT START DATE: 05/10/2010	
PROJECTED COMPLETION DATES		
MAXOUT DATE 03/20/2032	CURRENT EWC .. NOT CURRENTLY EARNING EWC	
YOA SIX YEAR DATE: / /	CURRENT EEC .. NOT CURRENTLY EARNING EEC	
INITIAL PAROLE DATE: 00/00/0000	NEXT PAROLE HEARING DATE: 00/00/0000	
TOTAL GT DAYS EARNED 000456	LABOR CREW/WORK PROG DATE: 99/99/9999	
TOTAL EARNED WORK CREDITS ..: 000000	LABOR CREW DISQ REASON:	
TOTAL EDUCATION CREDITS: 000000	CURRENT OR PRIOR SEX CONDUCT CONVICT	
TOTAL EXTRA EARNED CREDITS ..: 000	SUPERVISED REENTRY DATE...: 00/00/00	
TOTAL SERVICE TIME EARNED ...: 001062	ISS.....	
PFKEYS:	5: HISTORY OF DATE CHANGES	

4-©	1 Sess-1	167.7.50.33	SCDC1567	3/11
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 04/11/13

C0239

HAM JR, JOHN FORREST FBI # 495098EA5 SID# SC00515256 SCDC # 240615

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... KIRKLAND CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 25 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: F10236A

RACE....:W SEX...:M

PROJ MAXOUT DATE: 03/20/2032

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: R & E CENTER

CURRENT PROGRAM...: COURT-ORD ATU

AGE...: 45 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
KIDNAPPING	22 0 0	GREENVILLE	5/10/2010	V	5
FAIL TO STOP FOR OFFICER	3 0 0	GREENVILLE	5/10/2010	N	2
POINTING A FIREARM	5 0 0	GREENVILLE	5/10/2010	N	3
RESIST ARREST/WEAP 1 OFF	5 0 0	GREENVILLE	5/10/2010	N	3
ASSLT & BATT W/INTNT KIL	20 0 0	GREENVILLE	5/10/2010	V	4
MARIJUANA POSSESS	0 0 30	PICKENS	5/ 8/2010	N	2
TRAFFICKING IN COCAINE	10 0 0	PICKENS	5/ 8/2010	V	4
MANUF. DIST. METH. 1ST	15 0 0	PICKENS	5/ 8/2010	V	4
TRAFFICK METH 28-100GR 1	15 0 0	PICKENS	4/22/2010	V	4
CRACK DISTR PROX SCHOOL	4 0 0	GREENVILLE	7/24/20	3 N	2
ASSLT&BATTERY-HIGH&AGG.NA	1 0 0	GREENVILLE	1/ 7/20	2 N	3
BURGLARY-3RD DEGREE	1 0 0	GREENVILLE	8/24/1996	N	2

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
TRAF CRACK(10-28G,1ST)	8 0 0	GREENVILLE	7/24/20	3 V	4
ASSLT&BATTERY-HIGH&AGG.NA	3 0 0	GREENVILLE	7/23/20	3 N	3
BURGLARY-3RD DEGREE	1 0 0	GREENVILLE	1/ 7/20	2 N	2
EXPLOIT VULNERABLE ADULT	1 0 0	GREENVILLE	1/ 7/20	2 N	4
COCAINE POSSESS	1 0 0	GREENVILLE	1/ 2/20	2 N	2

PRIOR COMMITMENTS OVER 90 DAYS:

3/16/10 *POSSESSION OF WEAPON

26 YRS 7 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

POSS FIREARM/AMMO BY FEL

HOLD

ASST. DIST. ATTY.

CATEG: 3

POSSESS PISTOL AFTER CONV

WANTED

JOHNNY MACK BROWN

CATEG: 3

NO DETAINERS

ESCAPES:

3/24/10 ESCAPE

CLASS I

12/23/ 8 OTHER ESCAPE RELATED CODE NOT IN TABLE

4/12/94 OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

3/24/10 A & B OF AN EMP, ETC W/I CONVICTED

MAJOR STAFF

NON-ASSAULTIVE DISCIPLINARIES:

3/ 8/12 POSS. OR/ATTEMPT TO POSS CONVICTED

MAJOR

3/24/10 CLASS I ESCAPE CONVICTED

MAJOR

6/ 5/ 2 VIOLATIONS WRITE/POST IN

OTHER

2/25/ 2 OUT OF PLACE

NOT GUILTY

MAJOR

HISTORY OF MOVEMENTS:

10/31/12 KIRKLAND

INCARCERATED

RETURN FROM COURT

5/ 4/12 NORTH CAROLINA

AUTH ABSENCE (AWL)

TO COURT

5/12/11 LIEBER

INCARCERATED

ADMINISTRATIVE

4/13/11

KIRKLAND

INCARCERATED

R&E PROCESSING

HAM JR,JOHN FORREST FBI # 495098EA5 SID# SC00515256 SCDC # 240615 (CONTINUED

4/13/11	PERRY	INCARCERATED	NEW ADMISSION
8/16/10	UNK	RELEASE	SENT REMANDED/OVERTURNED
6/28/10	PERRY	INCARCERATED	RETURN FROM COURT
6/28/10	PICKENS CO	AUTH ABSENCE (AWL)	TO COURT
5/19/10	PERRY	INCARCERATED	RETURN FROM COURT
5/19/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
5/12/10	PERRY	INCARCERATED	RETURN FROM COURT
5/12/10	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
4/20/10	PERRY	INCARCERATED	RETURN FROM COURT
4/16/10	PICKENS CO	AUTH ABSENCE (AWL)	TO COURT
4/ 9/10	PERRY	INCARCERATED	RETURN FROM COURT
4/ 9/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
4/ 7/10	PERRY	INCARCERATED	RETURN FROM COURT
4/ 7/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
3/30/10	PERRY	INCARCERATED	RETURN FROM COURT
3/30/10	PICKENS CO	AUTH ABSENCE (AWL)	TO COURT
3/24/10	PERRY	INCARCERATED	RETURN FROM ESCAPE
3/24/10	ESCAPES	ESCAPED-AWOL	AWOL-ESCAPE
3/24/10	PICKENS CO	AUTH ABSENCE (AWL)	TO COURT
3/16/10	PERRY	INCARCERATED	RETURN FROM COURT
3/16/10	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
12/14/ 9	PERRY	INCARCERATED	ADMINISTRATIVE
11/16/ 9	KIRKLAND	INCARCERATED	R&E PROCESSING
11/16/ 9	PERRY	INCARCERATED	PROBATION VIOLATOR
6/29/ 7	GREENVILLE CO	PROBATION	RELEASED TO PROBATION
6/26/ 7	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
1/17/ 7	ANDERSON CO DF	INCARCERATED	ADMINISTRATIVE
6/29/ 5	KIRKLAND	INCARCERATED	ADMINISTRATIVE
6/29/ 5	BROAD RIVER	INCARCERATED	COURT/PAROLE HEARING VIA
7/28/ 3	KIRKLAND	INCARCERATED	R&E PROCESSING
7/28/ 3	PERRY	INCARCERATED	PROBATION VIOLATOR
7/14/ 2	GREENVILLE CO	PROBATION	RELEASED TO PROBATION
7/11/ 2	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
2/14/ 2	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
1/ 9/ 2	KIRKLAND	INCARCERATED	R&E PROCESSING
1/ 9/ 2	PERRY	INCARCERATED	PROBATION VIOLATOR
4/ 4/97	GREENVILLE CO	PROBATION	RELEASED TO PROBATION
3/20/97	PERRY R&E	INCARCERATED	NEW ADMISSION

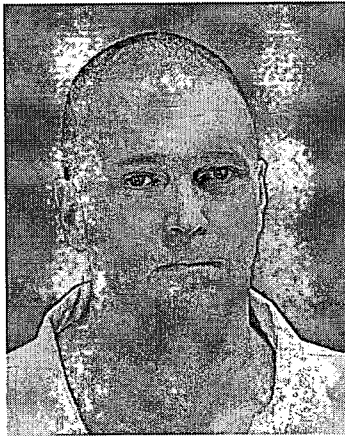
HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
CARPENTER HELPER	01/08/10	3/24/10	ESCAPE	2F5
DESIGNATED FACILITY	01/18/07	6/29/ 7	RELEASED/PAROLED	2F7
LAUNDRY HELPER	10/04/06	1/17/ 7	INSTIT TRANSFER	2F5
WARDKEEPER	04/27/06	10/ 3/ 6	INMATE REQUEST	2F5
LAUNDRY WORKER	05/27/04	4/26/ 6	INMATE REQUEST	2F5
CONSTRUCTION WORKER	08/28/03	5/26/ 4	LATERAL TRANSFER	2F5
AUTO BODY REPAIR TRA	03/14/02	7/14/ 2	RELEASED/PAROLED	2F5
FOOD SERVICE AIDE	02/22/02	3/13/ 2	INMATE REQUEST	2F5
FOOD SERVICE AIDE	02/19/02	2/21/ 2	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 4-7 HRS/WK	03/21/02	6/21/ 2	COMPLETED EDUC PROGRAM

***** END OF REPORT *****



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC D:	00240615
RACE:	WHITE	SID:	SC00515256
HEIGHT:	5' 10"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	215 lbs.	ADMISSION DATE:	04/13/2011
AGE:	46	LOCATION:	LIEBER
CITIZENSHIP:	CITIZEN - NATIVE BORN	SECURITY / CUSTODY:	3 / MINIMUM IN
BUILD:	LARGE	EWC LEVEL:	
COMPLEXION:	FAIR	EEC LEVEL:	
HAIR COLOR:	BROWN	PROJECTED RELEASE DATE:	01/23/2032
EYE COLOR:	GREEN	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
PICTURE DATE:	10/31/2012	SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
KIDNAPPING	ADULT-STRAIGHT SENTENCE	22	0	0	GREENVILLE	05/10/2010	V	5	09GS2309570	ACTIVE
FAIL TO STOP FOR OFFICER	ADULT-STRAIGHT SENTENCE	3	0	0	GREENVILLE	05/10/2010	N	2	09GS2309554	ACTIVE
ASSLT & BATT W/ INTENT KILL	ADULT-STRAIGHT SENTENCE	20	0	0	GREENVILLE	05/10/2010	V	4	09GS2309547	ACTIVE
POINTING A FIREARM	ADULT-STRAIGHT SENTENCE	5	0	0	GREENVILLE	05/10/2010	N	3	09GS2309548	ACTIVE
RESIST ARREST/WEAP 1 OFF	ADULT-STRAIGHT SENTENCE	5	0	0	GREENVILLE	05/10/2010	N	3	09GS2309549	ACTIVE
MARIJUANA POSSESS	ADULT-STRAIGHT SENTENCE	0	0	30	PICKENS	05/08/2010	N	2	08GS47-11	ACTIVE
TRAFFICKING IN COCAINE	ADULT-STRAIGHT SENTENCE	10	0	0	PICKENS	05/08/2010	V	4	08GS47-11	ACTIVE
MANUF. DIST. METH. 1ST	ADULT-STRAIGHT SENTENCE	15	0	0	PICKENS	05/08/2010	V	4	08GS47-11	ACTIVE
TRAFFICK METH 28-100GR 1	ADULT-STRAIGHT SENTENCE	15	0	0	PICKENS	04/22/2010	V	4	08GS47-11	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

DATE	DESCRIPTION
03/25/2014	POSSESSION OF A WEAPON
	LOSS OF CANTEEN PRIVILEGES FOR 246 DAYS
	DISC. DETENTION FOR 66 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 246 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 1825 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 246 DAYS
03/25/2014	POSS. OR/ATTEMPT TO POSSESS CELL PHONE
	LOSS OF CANTEEN PRIVILEGES FOR 516 DAYS
	DISC. DETENTION FOR 156 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 516 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 1825 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 516 DAYS
03/08/2012	POSS. OR/ATTEMPT TO POSSESS CELL PHONE
	LOSS OF CANTEEN PRIVILEGES FOR 540 DAYS
	DISC. DETENTION FOR 180 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 540 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 540 DAYS

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
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MOVEMENT			
MOVEMENT DATE	TO LOCATION	STATUS	REASON
06/20/2013	LIEBER	INCARCERATED	ADMINISTRATIVE
06/19/2013	KIRKLAND	INCARCERATED	RETURN FROM COURT
06/18/2013	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
04/23/2013	LIEBER	INCARCERATED	ADMINISTRATIVE
10/31/2012	KIRKLAND	INCARCERATED	RETURN FROM COURT
05/04/2012	NORTH CAROL NA	AUTH ABSENCE (AWL)	TO COURT
05/12/2011	LIEBER	INCARCERATED	ADMINISTRATIVE
04/13/2011	KIRKLAND	INCARCERATED	R&E PROCESSING
04/13/2011	PERRY	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS				
JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
FOOD SERVICE AIDE	09/13/2013	04/23/2014	UNSAT JOB PERFORM	3F5
WARDKEEPER ASSISTANT	06/21/2013	09/12/2013	LATERAL TRANSFER	3F5
WARDKEEPER ASSISTANT	05/29/2013	06/20/2013	INSTIT TRANSFER	3F5

EARNED EDUCATION CREDITS				
NO EARNED EDUCATION CREDITS DURING CURRENT INCARCERATION				